

SERBIA AND MONTENEGRO

POLL WORKER TRAINING VOTER AWARENESS ASSESSMENT LEGAL REVIEW

JULY 1997 - FEBRUARY 1998

PREPARED BY:

**CATHERINE BARNES, PROJECT TEAM LEADER
TOM PARKINS, SENIOR TRAINER
CARL SLAUGHENHAUPT, TRAINER
PARVINDER SINGH, TRAINER
ANTHONY REISSIG, TRAINER
DANIEL FINN, LEGAL ADVISOR
ALEXANDRA LEVADITIS, PROGRAM ASSISTANT**

**International Foundation for Election Systems
1101 15th Street, NW, Third Floor
Washington, DC 20005**

*This Report was made possible by a grant from the United States Agency for International Development (USAID).
The opinions expressed in this Report are solely of the International Foundation for Election Systems (IFES).
This material is in the public domain and may be reproduced without permission, citation is appreciated.*

TABLE OF CONTENTS



EXECUTIVE SUMMARY.....
.....1

REPUBLIC OF SERBIA, POLLWORKER TRAINING PROGRAM, PHASE I

I.	PROJECT BACKGROUND.....	6
	A. ASSESSMENT OF SERBIA'S ELECTORAL ENVIRONMENT.....	6
	B. PROJECT DEVELOPMENT	6
	C. PROJECT OBJECTIVES	7
II.	PROJECT IMPLEMENTATION	8
	A. CHANGES IN THE PRE-ELECTORAL ENVIRONMENT.....	8
	B. CHALLENGES TO PROJECT IMPLEMENTATION.....	8
	C. ADJUSTMENTS TO PROJECT PARAMETERS.....	9
	D. PROJECT ACTIVITIES	10
	1. IDENTIFICATION AND RECRUITMENT OF TRAINING ASSISTANTS	
	AND CORE TRAINING GROUP.....	10
	2. MATERIALS DEVELOPMENT.....	11
	3. CORE TRAINING AND RECRUITMENT OF SECONDARY TRAINERS.....	12
	4. SECONDARY TRAINING	12
III.	PROJECT EVALUATION	14
	A. PROGRESS TOWARD STATED GOALS.....	14
	B. FEEDBACK FROM CORE TRAINING GROUP.....	16

REPUBLIC OF SERBIA, POLLWORKER TRAINING PROGRAM, PHASE II

I.	PROJECT BACKGROUND	20
	A. PURPOSE OF ADDITIONAL TRAINING.....	20
	B. PROJECT OBJECTIVES	20
II.	PROJECT IMPLEMENTATION	20
	A. CONTACTING POLITICAL PARTIES AND DCTs.....	20
	B. CHANGES TO TRAINING CURRICULUM	21
	C. SECONDARY TRAINING OF POLLWORKERS.....	21

III. CHALLENGES TO PROJECT IMPLEMENTATION.....22

- A. VOTER APATHY22**
- B. LACK OF PARTY RESPONSE.....23**
- C. GOVERNMENT IMPEDIMENTS23**

RECOMMENDATIONS FOR FUTURE PROGRAMMING.....24

- A. REPUBLIC OF SERBIA24**
 - 1. ON-GOING TRAINING IN ELECTION PROCEDURES.....24**
 - 2. ELECTION LAW WORKING GROUP.....24**
 - 3. ELECTION RESOURCE CENTER.....25**
 - 4. VOTER LIST MAINTENANCE.....25**
 - 5. CIVIC EDUCATION25**
- B. SHIFTING ATTENTION AND RESOURCES TO
THE REPUBLIC OF MONTENEGRO.....25**

CONCLUSION26

REPUBLIC OF MONTENEGRO, VOTER AWARENESS ASSESSMENT

I. INTRODUCTION28

- A. MISSION BACKGROUND28**
- B. MISSION OBJECTIVES.....28**
- C. SCOPE OF MISSION.....29**
- D. COMPARATIVE EXPERIENCE: SERBIA AND MONTENEGRO.....29**

II. BACKGROUND30

- A. COUNTRY BACKGROUND30**
- B. ORGANIZATION OF THE STATE.....30**
- C. RECENT POLITICAL DEVELOPMENTS.....32**

III. ELECTION FRAMEWORK35

- A. CONSTITUTION35**
- B. LAW ON ELECTION OF COUNCILORS AND REPRESENTATIVES.....35**
- C. LAW ON THE REGISTER OF ELECTORS.....38**
- D. LAW ON FINANCING OF POLITICAL PARTIES.....39**
- E. ELECTION ADMINISTRATION STRUCTURES.....40**
- F. AGREEMENT ON MINIMUM PRINCIPLES FOR DEVELOPMENT OF A
DEMOCRATIC INFRASTRUCTURE42**

G.	MULTI-PARTY WORKING GROUP ON ELECTORAL REFORM.....	43
IV.	POLITICAL PARTY SCENE.....	45
A.	DEMOCRATIC PARTY OF SOCIALISTS.....	45
B.	PEOPLE'S PARTY OF MONTENEGRO.....	46
C.	LIBERAL ALLIANCE OF MONTENEGRO.....	46
D.	SOCIAL DEMOCRATIC PARTY.....	46
E.	DEMOCRATIC UNION OF ALBANIANS	47
F.	THE DEMOCRATIC LEAGUE OF ALBANIANS IN MONTENEGRO.....	47
V.	THE MEDIA ENVIRONMENT.....	49
A.	THE LAW ON PUBLIC INFORMATION.....	50
B.	STATE MEDIA OUTLETS.....	51
C.	INDEPENDENT MEDIA OUTLETS.....	53
D.	THE MASS MEDIA AND ELECTION CAMPAIGNS.....	53
VI.	NGO DEVELOPMENT.....	55
A.	NGO ENVIRONMENT	55
B.	ELECTION RELATED NGOS	55
C.	ELECTION ACTIVITIES OF STUDENT GROUPS.....	56
VII.	THE CITIZENRY	58
VIII.	RECOMMENDATIONS	59
A.	LEGAL REFORM	59
B.	ELECTION MANAGEMENT AND ADMINISTRATION.....	59
C.	VOTER REGISTRIES	60
D.	SYSTEM OF REPRESENTATION.....	60
E.	CANDIDATE NOMINATION AND CERTIFICATION.....	61
F.	CAMPAIGNS, FINANCING, AND THE MASS MEDIA.....	61
G.	VOTER INFORMATION	61
H.	POLLING SITE PROCEDURE	62
I.	BALLOT SECURITY AND CONTROL OF THE ELECTION PROCESS.....	63
J.	TABULATION AND REPORTING OF RESULTS.....	63
IX.	PROGRAMMING OPPORTUNITIES	64
A.	ADVISING ON THE DEVELOPMENT OF DRAFT LEGISLATION.....	64
B.	ASSISTANCE IN UPDATING AND MAINTAINING VOTER REGISTRIES.....	64
C.	NON-PARTISAN VOTER EDUCATION.....	64
D.	NON-PARTISAN CANDIDATE INFORMATION AND SUPPORT SERVICES.....	65
E.	TRAINING FOR CORE AND EXPANDED MEMBERSHIP OF	

	MUNICIPAL ELECTION COMMISSIONS AND POLLING STATIONS.....	65
F.	CIVIC EDUCATION	65
G.	LEGAL AND TECHNICAL ADVISING.....	66
X.	CONCLUSION	67

**REPUBLIC OF MONTENEGRO, TECHNICAL LEGAL ANALYSIS OF DRAFT ELECTION
LEGISLATION**

INTRODUCTION	69
--------------------	----

I.	OVERALL OBSERVATIONS.....	71
----	---------------------------	----

A.	CONSTITUTIONAL BASIS	71
B.	ORGANIZATIONAL ISSUES	73
C.	DRAFTING ISSUES	75
D.	STRUCTURE AND OPERATIONS OF ELECTION COMMISSIONS.....	76

1.	STRUCTURE	76
----	-----------------	----

a.	TIMING OF APPOINTMENT AND TERM OF OFFICE.....	76
b.	SEPARATION OF POWERS AND APPOINTMENT OF ELECTION	

COMMISSIONS	77
-------------	-------	----

2.	OPERATIONS	79
----	------------------	----

a.	ADMINISTRATIVE TRANSPARENCY.....	79
b.	ROLE OF EXPANDED MEMBERSHIP.....	81

E.	NOMINATION OF CANDIDATES	82
F.	COMPLAINT RESOLUTION	84
G.	PROTECTION OF MINORITY INTERESTS.....	85

1.	ETHNIC MINORITIES	85
2.	REFUGEES	88

H.	OBSERVERS	89
----	-----------------	----

II.	SPECIFIC COMMENTS ON PROPOSED LAWS.....	91
-----	---	----

A.	LEGISLATIVE ELECTION LAW.....	91
----	-------------------------------	----

1.	GENERAL COMMENTS	91
----	------------------------	----

a.	SCOPE AND AVAILABILITY	91
b.	RELATIONSHIP OF THE REC TO MECs.....	91

c.	BALLOT SECURITY	92
d.	VOTING OUTSIDE POLLING STATION.....	92
e.	COUNTING PROCESS AT THE POLLING STATION.....	92
2.	RUNNING COMMENTARY	93
B.	REGISTRATION LAW	99
1.	GENERAL COMMENTS	99
a.	NON-SPECIFICATION OF RESPONSIBLE AUTHORITIES.....	100
b.	MECHANISM FOR UPDATING VOTER INFORMATION.....	100
c.	RULEMAKING AND SUPERVISION	101
d.	INSPECTION AND APPEAL OF VOTER REGISTRY INFORMATION.....	101
e.	CITIZENSHIP ISSUES	104
2.	RUNNING COMMENTARY	104
C.	POLITICAL PARTY FINANCE LAW.....	105
1.	SCOPE AND APPLICABILITY	105
2.	STATE SUBSIDIES	105
a.	NON-CAMPAIGN SUBSIDIES	105
b.	CAMPAIGN SUBSIDIES	106
3.	SOLICITATION AND USE OF PRIVATE CONTRIBUTIONS.....	106
4.	EXPENDITURE LIMIT AND TYPES.....	106
5.	REPORTING AND SUPERVISION.....	107
a.	SUPERVISION	107
b.	REPORTING	107
	REFERENCES	109

ANNEXES

I.	WORKPLAN
II.	BRIEF VOTER AWARENESS ASSESSMENT, REPUBLIC OF SERBIA
III.	POLL WORKER TRAINING MANUAL
IV.	POLL WORKER TRAINING CURRICULUM
V.	ADULT EDUCATION MANUAL
VI.	EVALUATION OF TRAINING, PHASE I
VII.	EVALUATION OF TRAINING, PHASE II
VIII.	TRAINING CERTIFICATE OF ACHIEVEMENT

- IX. CONTACT LIST, REPUBLIC OF MONTENEGRO**
- X. CONSTITUTION OF MONTENEGRO**
- XI. LAW ON ELECTION OF COUNCILORS AND REPRESENTATIVES (DRAFT)**
- XII. LAW ON THE REGISTRY OF ELECTORS (DRAFT)**
- XIII. LAW ON THE FINANCING OF POLITICAL PARTIES (DRAFT)**
- XIV. LAW ON PUBLIC INFORMATION (DRAFT)**
- XV. AGREEMENT ON MINIMUM PRINCIPLES FOR THE DEVELOPMENT OF DEMOCRATIC INFRASTRUCTURE**
- XVI. IFES ADMINISTRATIVE ANALYSIS**
- XVII. IFES TECHNICAL ANALYSIS OF VOTER REGISTRY PROPOSAL**
- XVIII. OFFICIAL PRESIDENTIAL ELECTION RESULTS, REPUBLIC OF MONTENEGRO**
- XIX. RFP, DELIVERY ORDER, MODIFICATIONS TO DELIVERY ORDER**
- XX. WEEKLY REPORTS**

EXECUTIVE SUMMARY

Republic of Serbia

In late July 1997, the International Foundation for Election Systems (IFES) initiated a technical assistance program in the Republic of Serbia as the country's electorate, political forces and election officials prepared for parliamentary and presidential elections scheduled for 21 September 1997. The contest would ultimately determine the composition of a 250 seat unicameral legislature and the republican presidency, left vacant when Slobodan Milosevic assumed the federal presidency of Yugoslavia. It was hoped that the results would signal the prospects for political liberalization in the Republic of Serbia, the relative power of federal power structures under Milosevic's control, and the future role of Serbia in the Bosnian Peace Process. The aims of this project were:

1. To maximize the quality and breadth of poll worker training efforts through the creation of a training of trainers structure and the provision of reference and instructional materials for poll workers nation-wide.
2. To encourage the active and informed participation of voters through the conduct of a non-partisan voter information program, including targeted messages to traditionally disadvantaged groups.¹

The situation posed by a polarized opposition movement, -- part of which encouraged voters to go to the polls and oust the current regime, the remainder of which called upon its members to boycott what it deemed to be an illegitimate process -- necessitated considerable adjustments to the parameters of the project as originally envisioned. Despite these political challenges and their operational ramifications, an IFES team of election and area experts was able to build the capacity of political parties to conduct "in-house" training of poll workers required in this election and in the future by:

1. Instructing 1268 Core and Secondary Trainers, representing a spectrum of 10 political parties in 18 cities, in training methodologies and poll worker techniques.
2. Designing, preparing and distributing approximately 6000 training and reference manuals through an IFES-organized core training network and through political party headquarters and local chapters.²

Because September election results did not yield the "50% plus 1" turnout of the 7.2 million eligible voters necessary to validate the election, another presidential election was scheduled for 7 December 1997. In order to expand on this training opportunity after the September elections, IFES initiated a second phase of training in the Republic of Serbia, using one international trainer who continued the technical assistance project initiated in August.

¹ Due to the election boycott - endorsed by most opposition parties - in which potential voters were directed not to go to the polls on election day, USAID chose not to implement this portion of the project.

² See Annexes III and IV.

The Phase II project was designed to continue to train as many members of polling boards as possible. While the Phase I project selected 60 District Core Trainers (DCTs), Phase II selected three exemplary trainers from: Belgrade, Novi Sad, Nis, Kragujevac and Subotica, totaling 15 DCTs, and continued with training which had been initiated for the September elections.

Similar to the Phase I project conditions, this second phase found itself operating under the most challenging of circumstances. Opposition parties continued to call for an election boycott and other parties were financially limited due to the number of unexpected elections. Voter apathy and limited campaigning were also major contributing factors.

Despite these challenges, the Phase II team was able to train an additional 284 poll workers in eight cities: Novi Sad, Subotica, Leskovac, Kragujevac, Topola, Zrenjanin, Nela Palanka and Nis. 500 manuals were distributed to the DCTs for training sessions and certificates of accomplishment were presented to attendees who completed training.

Republic of Montenegro

Under the same no-cost extension of the delivery order which provided for the Phase II secondary training in Serbia, a Voter Awareness Assessment was initiated in the Republic of Montenegro. On 15 November 1997, IFES sent a three-person team to the Republic of Montenegro to conduct a Voter Awareness Assessment with the following objectives:

1. Analyze the post-presidential election environment, particularly the impact of subsequent political maneuvering by republican and federal authorities regarding the legitimacy of the election results on the prospects for a peaceful transition of power and the conduct of minimally free and fair parliamentary elections in the Spring of 1998;
2. Assess on-going weaknesses in Montenegro's electoral system which threaten to undermine its actual and perceived efficiency, transparency, and integrity;
3. Determine the changing informational and educational needs of the country's citizenry, including traditionally disadvantaged groups such as ethnic minorities, women, youth, and rural dwellers in an increasingly competitive political environment and in the midst of substantive electoral reforms;
4. Identify opportunities for constructive cooperation leading into the parliamentary election cycle and in the longer term.

During the three-week mission, IFES team members held a series of consultations with more than 50 government officials, election administrators, political party leaders, student organizers, NGO activists, and media representatives in the capital city of Podgorica and the towns of Budva, and Ulcinj. The team was provided with considerable access to opinion leaders and decision-makers at the highest levels of government and administrative and political structures. The reception of the IFES mission in Montenegro proved to be the antithesis of its experience in Serbia. Contrary to the environment of suspicion and antagonism under which IFES advisors worked in Serbia, their counterparts in Montenegro were able to engage in a constructive dialogue both at official and informal levels and in an atmosphere of relative transparency.

The country's government, Assembly, and political parties should be commended for their

commitment to bring the country's political and electoral legislation and practice into conformity with democratic norms. Such efforts have been endorsed and should be tangibly supported -- through the provision of *systems-oriented* technical assistance -- by the international community. At the same time, it should be recognized that the very real political pressures to conduct new legislative elections at the national and municipal levels in the Spring significantly compresses the timeframe in which modifications to existing laws can be thoroughly considered and aired in public debate. Under such circumstances, the Inter-Party Working Group drafting legislation should focus its immediate efforts on priority issues which proved to be problematic during recent presidential elections and which may have contributed to the *perception*, if not the threat, of fraud.³ It should further commit itself to further legal and technical refinements based on a comprehensive analysis, in cooperation with legal scholars and election practitioners, of the presidential, parliamentary, and municipal election experiences. Toward this end, an analysis of the election law is included in the annexes to this report.

Among the electoral issues identified by the team and priorities for consideration by the Working Group are:

- ▶ An absence of clarity and detail throughout the legislation governing campaigns and elections which undermines, if not precludes, the correct and consistent interpretation of the law, efficient and uniform administration of elections, and equitable adjudication of grievances;
- ▶ The exclusion of practitioners, among them legal scholars, election officials, and journalists from the process of reforming legislation on elections, voter registries, campaign financing, and public information;
- ▶ The considerable diffusion of election administrative responsibilities which leads to confusion among voters and political participants, disagreements between state structures, and an ineffective administrative system;
- ▶ The absence of a central Register of Electors, a methodical and reliable means of updating and correcting voter registries at the municipal level, and a mechanism for review by political parties which has resulted in the disenfranchisement of thousands of voters;
- ▶ The adoption of a system of representation which responds to the right of representation of the Albanian minority within Montenegro, such as an adjusted PR system with a lower threshold for legislative mandates, a schema for constituency delimitation or other alternative systems;
- ▶ The question of whether political parties registered solely at the federal level have the right to nominate candidates for republican, municipal, and local offices in Montenegro and the Federal Parliament of Yugoslavia or only the latter;
- ▶ Unrealistic timetables established within the law for campaign, election, and

³ More information on the Working Group and the draft legislation that they put forth affecting elections can be found in the Voter Awareness Assessment, Republic of Montenegro.

adjudication related deadlines;

- ▶ The inability of polling site boards to efficiently handle the volume of voters envisioned in the law, ie. as many as 2500 people, and assure the security of the ballot box and transparency of the commission's work within the prescribed voting hours;
- ▶ The absence of provisions within the law on the rights and responsibilities of international and domestic observers;
- ▶ Inadequate ballot security measures with respect to the printing, transport, distribution, storage, and validation of ballots and during voting outside of the polling premises;
- ▶ The dearth of a campaign finance regulatory system that should be designed not to discourage political activity but to encourage compliance and public disclosure, as well as inadequate limitations on the use of public office and resources for overtly political purposes;
- ▶ Inequitable treatment of candidates and political parties with respect to state-subsidized media time/space, conditions for paid advertising, and news coverage.

Legal Commentary

During the course of the Voter Awareness Assessment, IFES learned that three pieces of legislation affecting elections were being drafted by a Parliamentary Working Group in the Republic of Montenegro, including a law on election to the Assembly and municipal councils, law on voter registries and a law on financing of political parties.⁴ While in Montenegro, IFES was repeatedly asked by the Deputy Prime Minister, the Republican Election Commission, Working Group members and political parties to provide commentary on the legislation in order to instill an American perspective on the drafting process and provide comparative experience and knowledge.

Toward this end, a second no-cost extension to the delivery order was requested to employ an IFES legal advisor for a period of ten days to review the draft legislation. The advisor drafted an analysis which focused on general issues common to the laws and addressed each piece of legislation on an individual basis, focusing on gaps and inconsistencies within each. The comments are suggested by analysis of the proposed laws themselves, certain other materials, general legal principles, comparative practice and international standards.

The proposed laws within the scope of the legal review will provide an adequate basis for the upcoming parliamentary elections in Montenegro as well as longer-range reform of the Montenegrin election system. At the same time, there are numerous issues which should be addressed in order to

⁴ These laws were subsequently re-drafted by the Working Group and passed by the Republican Assembly by mid-February. Drafts referred to throughout the assessment and legal review are those obtained by the IFES Team during the assessment mission.

improve administration of the upcoming parliamentary elections and the probability that they will be viewed as a legitimate expression of the democratic will of the people of Montenegro. In addition, other, more far-reaching, reforms should be considered in order to create a stable basis for future elections and further development of democratic political institutions in the Republic.

REPUBLIC OF SERBIA
POLL WORKER TRAINING PROGRAM
PHASE I
22 JULY - 7 OCTOBER 1997

I. PROJECT BACKGROUND

A. ASSESSMENT OF SERBIA'S ELECTORAL ENVIRONMENT

In April 1997, IFES sent a four member technical team to the Republic of Serbia to conduct an assessment of the pre-electoral environment leading into parliamentary and presidential elections as requested in a delivery order initiated by USAID. While in Serbia, the team met with representatives of over 50 organizations and institutions throughout the country, including government offices and ministries, municipal authorities, election commissions, political parties, non-governmental organizations (NGOs), trade unions, research foundations, media outlets, academic institutions, international organizations, and US Government representatives in Belgrade. As part of its mission, the IFES team analyzed the internal strengths and weaknesses of the Serbian election law and administration, with a particular emphasis on identifying and examining both where the process was vulnerable to external influences and where it was open to independent monitoring.⁵

Based on these consultations, the team concluded that the campaign and election process in Serbia required extensive, active, and prolonged monitoring and support from the international community. Opportunities for constructive involvement by the international community identified by the team included:

- ▶ Provision of information on comparative election law and practice;
- ▶ Promotion of voter awareness and initiative;
- ▶ Facilitation of greater public control over the campaigns and elections process;
- ▶ Provision of long-term monitoring efforts.

At the time of the team's visit, the government and the ruling party expressed an interest in receiving some form of limited assistance leading into the elections. An even greater international effort was advocated by the opposition and its supporters. To enhance the transparency of the election process and discourage the fraud and disruptions which occurred in the aftermath of the November 1996 local elections, the IFES team deemed it vital to respond to calls by participating parties for technical assistance.

B. PROJECT DEVELOPMENT

In developing its technical assistance project, IFES sought to capitalize upon the extant legal rights given to political parties. According to Serbian election laws, qualifying political parties, ie. those with candidates on the ballot, were entitled to nominate representatives to serve on election commissions. Each election commission was comprised of a core membership, appointed by the government, and an expanded membership, appointed by political parties. Access to commission structures by political parties, and the subsequent right of all commission members to minutes of the election results, provided an invaluable means of monitoring the integrity of the election process and tracking the validity of election results. At the same time, the lack of training and experience among political party appointees relative to their government cohorts meant that the former were often ill-

To order a copy of the team's report, "Republic of Serbia: Pre-Election Technical Assessment," by Jeffrey Fischer, Daniel Finn, Jeffrey Carlson, and Ludmila Haroutunian, April 1997, contact the International Foundation for Election Systems' Resource Center, 1101 15th Street NW, Third Floor, Washington, DC 20005 or www.ifes.org/infores/htm.

informed of their rights and responsibilities under the law, and ill-equipped to effectively monitor election day activities, document irregularities, participate in the counting process, confirm reported results, and lodge complaints. In order to reduce this inequity and enhance the transparency of the election process, IFES focused its efforts on building the in-house capacity of political parties to conduct poll worker training and “training-the-trainers” programs both for pending and future elections.

At the same time, it was acknowledged that one of the most significant barriers to free and fair elections was the inability of voters to obtain timely and objective information on the campaign and election process. In particular, Serbia’s constantly changing “rules of the game” necessitated active measures to keep voters informed about their rights and responsibilities. This need was deemed to be particularly acute among certain target groups including ethnic minorities, rural and town dwellers, women, and youth. With the intent of promoting constructive participation of voters throughout the entire process and informed decision-making on election day, IFES proposed to conduct a voter awareness assessment to identify gaps in information and understanding, clarify the needs of target groups, and assess the feasibility of cooperating with indigenous entities outside the control of republic structures to develop a non-partisan voter information campaign.

C. PROJECT OBJECTIVES

The following objectives were established for the project:

1. To maximize the quality and breadth of poll worker training efforts through the creation of a “training-the-trainers” structure and the provision of reference and instructional materials for poll workers nation-wide.
2. To encourage the active and informed participation of voters through the conduct of a non-partisan voter information program, including targeted messages to traditionally disadvantaged groups.

These objectives were formulated based on the circumstances in the Republic of Serbia at the time of the technical assessment and were dependent upon the provision of proposed resources.

II. PROJECT IMPLEMENTATION

A. CHANGES IN THE PRE-ELECTORAL ENVIRONMENT

The most significant change in the pre-electoral environment between the conduct of IFES' initial technical assessment and the initiation of its poll worker and voter information project was the decision by twelve prominent opposition parties to boycott the elections. Boycotting political parties cited a history of election fraud by the ruling party; the redrawing of districting lines to favor the ruling party; biased reporting by state controlled media outlets; state control over the infrastructure supporting the mass media including "independent" media, such as printing houses, paper suppliers, radio transmitters, etc. and the lack of parliamentary and public debate over amendments to parliamentary and presidential election laws; as reasons for their decision not to participate in the process. The boycotting political parties contended that to compete in the elections was to legitimize an "illegitimate" process.

In addition to Milosevic's Yugoslav Left Coalition, comprised of the Socialist Party of Serbia, the United Left, and New Democracy, a number of political parties decided to forward candidates for parliamentary seats and the presidency. These included the Serbian Renewal Movement, the Serbian Radical Party, the Democratic Alternative, the Democratic Alliance of Vojvodina Hungarians, and the List for Sandjak-Suleman Ugljanin. Both the election campaigns and the anti-election boycott had weak public images and failed to send coherent messages to the voters. Within the community of democratic parties, conflicting and unconstructive messages were bombarding the electorate, advising them to go to the polls and not to go to the polls. Boycotting parties were quick to condemn their former democratic coalition partners who opted to participate in the elections, claiming that they weren't "real opposition." While the various sides targeted each other with negative campaigns, none offered a vision for Serbia's future nor an issues-oriented program.

B. CHALLENGES TO PROJECT IMPLEMENTATION

Due to difficulties in acquiring visas for American members of the team, IFES was able to initiate programming only on a limited scale in Serbia through its sole non-American team member, who arrived on the ground the first week in August, and a local hire facilitator. Failing timely processing by the Consulate in Washington, IFES sent one team member to Eastern Europe hoping the process would be facilitated more quickly elsewhere.⁶ However, visas were not issued to IFES' American team members until the first week of September, effectively halving the timeframe in which the program could be conducted. As a result, adjustments were required to the scope of the project (see below).

Once on the ground, IFES' presence was viewed, at the very least, with suspicion. IFES' activities were monitored through phone taps, hotel room searches, and tailing and photographing of IFES team members. At the same time, Serbian authorities appeared to move away from having international observers present at the polls, attempting to place conditions upon which individuals would be permitted to be part of the Organization for Security and Cooperation in Europe (OSCE)

⁶ Likewise, other international NGOs, such as the International Republican Institute, attempted to obtain visas through a third country - Hungary.

delegation. The GoS was ultimately forced to back down on the issue in the face of exceedingly public pressure by the OSCE. Once demonstrations erupted following the ouster of Belgrade's mayor and the removal of the Board of Studio B Television, some IFES trainees and contacts -- by virtue of their participation in the protests -- became vulnerable to arrest and interrogation. At least some additional project information on IFES' activities did reach the authorities as a result of police inquiries conducted during the course of the protests.

Beyond the realm of official reaction, anti-American sentiment proved pervasive among the public. Such sentiments were not limited to anti-reform forces, but were frequently expressed by "democratically-oriented" activists in political parties, the mass media, the student movement, and NGOs. The declining economic situation in Serbia, according to supporters of the regime, as well as Milosevic's continued strangle-hold on power, according to opposition members, "were the result of policies of the international community," particularly those of the United States. It was clear that at least a portion of those supporting the boycott were convinced that their future would be decided by others, particularly the international community, and not by themselves, ie. through the balloting process.

C. ADJUSTMENTS TO PROJECT PARAMETERS

The primary concern of the project team in light of changes in the electoral environment was the implementation of the voter information component of the project. As a result, the focus of IFES' brief Voter Awareness Assessment was modified to include an analysis of the impact of the election boycott on the changing needs of the electorate, the capabilities of political parties and mass media outlets, and the feasibility of a US-funded voter education program. The Assessment was conducted by the IFES Trainer and local facilitator on-site with off-site strategic and programmatic input by the Team Leader, Voter Education Specialist and IFES/Washington.⁷ These are some of the findings of the assessment team:

1. Although the official US position, as expressed by the Department of State, to "neither condemn nor support the boycott," appears to leave the window open for US assistance in the area of voter education, there appears to be virtually no possibility of conducting what is perceived to be a non-partisan voter information and mobilization campaign, or even a public information campaign on the boycott under the current circumstances.
2. The political sympathies of alternative media sources relative to the boycotting opposition parties further reduces the potential pool of IFES cooperating partners for the conduct of a truly non-partisan voter information and mobilization campaign.
3. The refusal of GoS representatives to act in a timely manner on the visa applications of IFES team members tasked with the development and delivery of voter information materials has rendered the "do-ability" of the project virtually impossible.

Despite their reservations about proceeding with the voter information component of the project during the course of the campaign period, the team emphasized that:

⁷ A copy of the Voter Awareness Assessment can be found in Annex II to this report.

While the operational details of conducting a non-partisan voter information and mobilization in this extremely polarized environment and an increasingly compressed timeframe are problematic, the [on-going] need for civic, voter, and political education in Serbia is no less acute. The electorate is in dire need of objective information aimed at empowering them to constructively participate in Serbia's political and electoral processes and to monitor the activities and limit the power of government. Political education is also essential to produce a responsible political elite and political institutions capable of representing the interests of their own constituency and governing the whole of Serbian society.

Under the combined political and operational circumstances, IFES and USAID agreed to suspend the voter information component of the project.

At the same time, the late arrival of the bulk of the training team -- 5 weeks behind schedule -- and a change in the election date (elections were actually called for 21 September rather than 28 September as envisioned in the original workplan) additional modifications were required to succeed in the poll worker training component of the project. While training of the 60 Domestic Core Trainers (DCTs) fell behind the original workplan by only a week, instruction of the 1200-person Secondary Training Group fell behind by two weeks, occurring between 11 September and 20 September, thereby effectively collapsing the three-tiered training pyramid into two. Many secondary training sessions were much larger than originally planned, some with hundreds of attendees, some of whom were clearly tasked with training their party colleagues while others were solely appointees to polling site commissions. To meet such a demand within the available timeframe, secondary training sessions were reduced from two days to one with training still being conducted all the way up to the day prior to elections. Due to the compressed timetable, the ability of the Secondary Training Group to subsequently train their party cohorts was severely reduced, although reports indicated that informal third tier training did occur on the heels of the secondary training sessions. Core and secondary trainees were also able to distribute written training materials to party representatives beyond the immediate audience of the training sessions.

D. PROJECT ACTIVITIES

As a result of the operational difficulties noted above, the 6-person IFES project team was spread across three American and two Balkan cities during the first half of the project. Only two of the six team members were in Belgrade for the duration of the project. Nonetheless, work proceeded with the understanding that the project would need to remain responsive to the changing programming environment and the team would need to "hit the ground running" if and when visas were issued. IFES' local facilitator proceeded with the establishment of an IFES office and the hiring of administrative staff, while the training team began to lay the foundation of the training project.

1. Identification and Recruitment of Training Assistants and Core Training Group

The sole non-American team member arrived in Belgrade on 6 August and proceeded to work with the local hire facilitator to interview candidates for three training assistant positions. The training assistants were responsible for: identifying and recruiting Core Trainers, organizing the first tier of training, liaising with national political party organizations, back-stopping for Core Trainers once secondary training activities had been initiated, and soliciting feedback from the Core Trainers on the quality and impact of secondary training and on the observations of poll workers on election day.

Under the circumstances, they proved vital to the ultimate success of the training project. Once selected, they, along with the international IFES trainer, proceeded to interview potential candidates for the core training positions. Training "centers" were set up in the cities of Belgrade, Novi Sad, Subotica, Nis, and Kragujevac. Core Trainers were drawn from the NGO and academic communities and the legal and juridical professions in each city to safeguard against politicization of the program and to remain above the in-fighting that was taking place within the democratic opposition. Each city was allocated ten core training positions with the exception of Belgrade and its environs, which had twenty. To better facilitate the operation of the core trainer network, it was decided that the best trainee in each city would serve as a coordinator, liaising with the broader Core Trainer Group and reporting on a regular basis to the training assistants based in Belgrade. The process of recruiting core trainees and reviewing their responsibilities was completed by the last week of August.

2. Materials Development

In the United States, the remainder of the training team proceeded with the development of poll worker and training of trainers materials. Training materials were based on fundamentals of election administration, on Serbian election laws, and on recently adopted amendments to those laws. The poll worker training manual began with an explanation of the poll workers conceptual role, stressing objectivity and non-partisan conduct. It then ushered the poll worker chronologically through his/her responsibilities from pre-election preparations through election day, concluding with the counting of ballots and reporting of results. A glossary of legal terms was also added. The preliminary draft was forwarded to Belgrade the third week of August for editing by the IFES Trainer on-site. The revised version was submitted for translation and subsequently underwent a series of legal reviews by independent legal experts in Belgrade. Draft versions of the poll worker manual were also distributed to the Core Training Group during the first week in September for their comments.

Also during the third week of August, development of the training curriculum and adult education materials began in the US. The training curriculum included lesson plans comprised of presentations, working group exercises, break-out sessions, demonstrations and role-playing exercises for 10 segments of the training session. Each plan included information on the amount of time needed to complete the session, the type of sessions, materials needed, the objective of the session, a training outline for the instructor, and performance and project evaluations. The ten segments covered such topics as an introduction to election official training and group orientation, essential polling materials, arranging the polling site, pre-polling procedures, the role of observers, conduct of the poll, threats to the polling process, counting votes, and reporting of results. As a companion piece to the training curriculum, a "training-the-trainers" manual, "How Adults Learn," was also developed.⁸ This manual instructed trainers how to set expectations for training sessions, motivate trainees, ensure that training was utilized and applied correctly, stimulate learning, present training materials, deal with misinformation among trainees, and encourage participation. These materials were sent to Belgrade for editing and translation during the last week of August.

As many official election documents, in particular forms and regulations, were not available until 15 days before the election and could not, therefore, be included in the manual, supplementary

⁸ See Annex V.

oral and/or written materials were provided to the core training group. Issues addressed included sample electoral roll extract pages, ballot control sheets, ballot envelopes and packets, observer credentials, certificates of suffrage, joint electoral lists, polling place signs, and minutes of election results.

Fifteen hundred (1500) copies of each manual were provided to core and secondary trainers during the second week of September, with an additional 1500 each of the printed versions distributed to poll workers through the core trainer network and political party structures during the third week of September. This totaled some 6000 manuals distributed directly by IFES.⁹ Reports from Core Trainers indicate that additional copies were made by local party chapters based on need.

3. Core Training and Recruitment of Secondary Trainers

Instruction of the Core Training Group in five cities began on 29 August. The first two-day training session was conducted for 20 trainees in Belgrade. During the course of each day-long session, Core Trainers were introduced to the mission of IFES and its mandate in Serbia. A general introduction to the role, rights, and responsibilities of poll workers was followed by a review of the poll worker training manual and an introduction to training techniques. Each session was followed by a question and answer session. Questions tended to deal with the inadequacy of Serbian election legislation and with comparative election practices relative to those in Serbia. Training for groups of 10 continued in the cities of Novi Sad, Subotica, Nis, and Kragujevac through 7 September. As noted earlier, the best student in each session was selected to coordinate the activities of the broader Core Training Group and provide routine reports to the training team in Belgrade.

Once the entire training team arrived in Belgrade as of 5 September, follow-on consultations were held with the Core Trainers on 8 and 9 September. The purpose of these follow-on sessions was to distribute the final versions of poll worker and training of trainers materials, discuss local recruitment of Secondary Trainers through political party chapters, review the schedule for secondary training of political party representatives based on registration forms submitted by the national political party organizations, outline coordination and reporting responsibilities, and provide further instruction on select aspects of the election process.

Once initial training had been completed for the Core Training Group, efforts proceeded with the recruitment of secondary trainees. IFES' training assistants in Belgrade met with representatives of all the national political parties to brief them on the training program and extend invitations to them to nominate trainees. The Core Training Group contacted local chapters of the national political parties, as well as regionally based political parties, to do the same. Major political parties were invited to nominate 150 to 200 trainees throughout the country, while smaller political parties were asked to nominate 50 to 60 trainees to fill the 1200 secondary training slots. These meetings, along with those conducted by USAID/Belgrade and the US Embassy/Belgrade, confirmed the broad-based support for IFES' poll worker training project despite the boycott of elections by a number of opposition political parties. In fact, boycotting political parties participated actively in the training sessions.

⁹ Manuals were reviewed and approved by USAID/Belgrade prior to distribution.

4. Secondary Training

Secondary training was initiated in Belgrade, Novi Sad, Subotica, Nis, and Kragujevac on 11 September and continued through the 20 September. The 1208 trainees who participated represented 10 political parties and 18 cities throughout Serbia.¹⁰ Given the short amount of time left before the elections, attendees of the later sessions were responsible for training their party colleagues in polling site procedure and/or serving on polling site commissions on election day. Parties not participating in the elections were still interested in learning as much as possible about the process and about their legal rights. Training sessions were conducted by the Core Trainers with IFES Trainers serving as mentors.

Questions during the training sessions covered a wide range of issues ranging from IFES' mandate in Serbia, criteria for determining ballots invalid, and processing of voters to dealing with violations of election law. In response to repeated questions on the latter, participants were informed that two things were necessary to fight election fraud, the first being widespread knowledge of election procedures and voters' rights, which was the aim of IFES' project in Serbia. The second was to compile a credible body of evidence that fraud or improprieties had taken place. Participants were encouraged to make every attempt to get detailed, first-hand accounts and documentation of suspected fraud and improprieties. They were advised to get names, dates, times, places, and descriptions of alleged actions. Armed with this documentation, appeals could be filed with District Election Commissions and the Republican Election Commission. Participants were also advised to keep copies of this documentation in order to pursue alternative strategies should legitimate appeals be ignored or denied. To better facilitate this process, IFES designed and distributed polling site forms to party agents for use on election day.¹¹

Once secondary training was completed and election day over, the Core Trainers were tasked with following up with the Secondary Trainers in order to evaluate the success of the program and gather information on the experience of party agents on election day. This feedback is described in greater detail in the following section.

¹⁰ See Chart 3.1 and 3.2

¹¹ See Annex VI.

III. PROJECT EVALUATION

A. PROGRESS TOWARDS STATED GOALS

Despite the altered electoral environment in which the project was carried out and obstacles to its implementation, the following list of deliverables were fulfilled:

Poll Worker Training

1. 60 Core Trainers instructed by the IFES project team in training and poll worker techniques;
2. 1208 Secondary Trainers were instructed by the Core Training Group in training and poll worker techniques (geographical and political representation detailed in tables 3.1 and 3.2);

Table 3.1 Party Representation of Secondary Training Group

Political Party	Number of Trainees	Percentage of
Serbian Renewal Movement (SPO)	522	43.21%
Coalition of Vojvodina (K"V")	277	22.93%
Democratic Party (DS)	144	11.92%
Muslim National Council of Sandzak	63	6.95%
Alliance of Subotica Citizens (SGS)	39	3.23%
New Democracy Party (ND)	18	1.49%
Socialist Party of Serbia (SPS)	7	.6%
Democratic Party of Serbia (DSS)	5	.4%
Yugoslav Left (JUL)	4	.33%
Civic Alliance of Serbia (GSS)	1	.08%

Affiliation Undeclared	44	3.39%
TOTAL	1208	99.75%

Table 3.2 Regional Breakdown of Secondary Trainers

City	Number of Trainees
Belgrade	36
Lazarevac	36
Smederevo	18
Cacak	62
Loznica	100
Sremsja Mitrovica	94
Novi Sad	312
Vrsac	22
Subotica	39
Tavankit	9
Arukhe	20
Prokuplje	101
Novi Pazar	38
Kragujevac	55
Nis	180
Svilajnac	16
Lucani	16
Jagodina	55
TOTAL	1208

3. Preparation and distribution of approximately 6000 training manuals (3000 of the poll worker training manual and 3000 of the poll worker curriculum and adult education manual) through the core training network and political party headquarters and their local

chapters. Additional copies reportedly made by local political party chapters based on need.

4. Capacity of political parties to conduct "in-house" training of poll workers required in this election and for election administrators in the future enhanced through the provision of training, mentoring, and materials.

Voter Information

5. Brief Voter Awareness Assessment with Recommendations submitted to USAID. Based on recommendations made in the assessment, IFES and USAID agreed not to pursue the development of voter education materials during the election campaign;

Project Management and Reporting

6. Workplan submitted to USAID;
7. Weekly Reports provided to USAID/Belgrade and USAID/WDC;
8. Verbal briefings provided to USAID/Belgrade, the US Embassy/Belgrade, USAID/WDC, and the Department of State upon request.
9. Draft Project Report for Phase I provided to USAID.

B. FEEDBACK FROM CORE TRAINING GROUP

The Core Training Group was asked to confer with Secondary Trainees to assess the quality and utility of the training project. Based on this input, the Core Training Group completed written evaluations and the Training Coordinators were brought to Belgrade for a verbal de-briefing.

As part of the written evaluation, Core Trainers were asked if they had enough information to thoroughly instruct the secondary training group on a variety of subjects:

Table 3.3 Evaluation By Training Subject

Subject Matter	Yes	No
Ethical Responsibilities of Election	53 (88%)	7
Role of Observers	53 (88%)	7
Essential Materials for Voting	59 (98%)	1
Polling Site Layout	59 (98%)	1
Processing of Voters	56 (93%)	4
Dealing with Threats to the Voting	57 (95%)	3
Proper Procedure for Counting	49 (82%)	11
Proper Procedures for Reporting E	57 (95%)	3
Reporting Election Results		

Core Trainers were then asked to rank the overall quality of the training program:

Table 3.4 Overall Evaluation of Training Program

Scale	Number of	Percentage
Excellent	23	38%
Very Good	31	52%
Good	4	7%
Not So Good	-	-
Poor	-	-

Core Trainees from the cities of Kragujevac and Subotica further reiterated their impression of the high level and efficiency of the training method employed by IFES in the commentary section of their evaluations.

Beyond assessing whether the Core Training Group was satisfied with the training program from the perspective of a trainee, IFES also needed to determine whether they felt sufficiently confident in their knowledge of the subject material and training techniques to train the Secondary Training Group:

Table 3.5 Evaluation of Trainee Confidence

Yes	No
58	-
97%	-

Additional comments offered by the Core Trainers related primarily to:

- ▶ Vagaries of the election law particularly with regard to a number of campaign and election procedures;
- ▶ The failure of the Republic Election Commission to issue regulations on polling site procedures in a timely manner, if at all;
- ▶ The short time frame in which training was to be conducted.

Beyond these major issues impacting not only the training program, but also the election campaign itself, a number of recommendations were made for improving the training program in the future. These included: breaking training sessions down into smaller groups (this varied from site to site depending upon the number of participants forwarded by various political parties); offering more demonstrations of polling site procedures, lengthening training sessions to provide more time for interaction with trainers and for discussion; translating materials into the languages of Yugoslavia's minorities, obtaining further clarification of select legal terms and concepts, and provision of training on comparative election systems.

Additional information was also obtained from the Training Coordinators during an oral debriefing in Belgrade on 24 September:

BELGRADE TEAM:

The glossary of legal terms was very good because it explained the meaning of all terms which must be familiar to polling site commission members. The manual was also good, particularly sections which highlighted rights and responsibilities not known to most people, even appointees to expanded polling site commission membership, ex. the right of voters to vote outside polling sites. In the future, the training curriculum should also be adapted to local teaching methods with an emphasis on demonstrations and explanations rather than on role-playing exercises;

NORTH TEAM (Novi Sad and Subotica):

In the future (for simultaneous conduct of elections to different offices), it would be helpful to include references to articles of all laws governing the campaigns and elections. [Although no such legal provisions currently exist in the election law or REC regulations] it would also be useful to elaborate how to handle disputes within the polling site election commission during the vote counting process. Some points require additional clarification, such as voter registration, the process by which ballots are invalidated, and handling of spoiled ballots. With respect to the training curriculum, it should be streamlined with greater emphasis on demonstrations rather than role-playing exercises.

SOUTH TEAM (Nis and Kragujevac):

[Due to the lack of detail in Serbian election law], many questions of a legal nature could not be answered. Article numbers for each section of the training manual and each law in force should be included in the future. Information also needs to be provided on how to handle the situation whereby a fellow member of the polling site commission breaks the law.

Among the future programming needs identified by the Training Coordinators, Training Assistants, and IFES Training Team which could be met by IFES were:

- ▶ **Legal Reform:** To address the inadequacies of Serbian election laws and administrative regulations as well as political manipulation of the process by which the laws are amended and constituency lines drawn;
- ▶ **Institutional Reform:** Aimed at greater independence of election commissions, the mass media, and the judiciary;
- ▶ **Civic Education:** Ranging from basic citizens' and voters' rights to the merits of informed and constructive engagement of political and electoral processes, and the means of organizing citizens' initiatives with the intent of monitoring public institutions and influencing public policy;
- ▶ **Development of Objectives and Strategies for NGOs and Political Parties:** Designed to help these groups make government more transparent, accountable, and responsive;
- ▶ **Local Governance:** Aimed at the development of constituent relations and services including the introduction of public records, public notification, and public meetings.

These recommendations further reinforce the findings of the brief Voter Awareness Assessment conducted in Serbia on the need for objective voter and civic education:

The training teams also concurred that programming through local leaders and institutions was the most productive and efficient means of working in Serbia, not only with respect to official structures, but also with regard to political party organizations.

REPUBLIC OF SERBIA
POLL WORKER TRAINING PROGRAM
PHASE II
18 NOVEMBER - 9 DECEMBER 1997

I. PROJECT BACKGROUND

A. PURPOSE OF ADDITIONAL TRAINING

It is necessary that poll workers be educated about their rights and responsibilities, including being able to properly observe and tally the voting process. The Phase II team set out to continue the poll worker training mission of Phase I. Because Phase I goals were obstructed by delayed issuance of visas and limited time, IFES sought to continue its training program. Incorporating the groundwork already laid by the Phase I team, the Phase II team proceeded to set up and conduct additional training sessions.

B. PROJECT OBJECTIVES

1. To re-establish an IFES on-site presence for the 7 December election.
2. To act as liaison with party representatives and NGOs.
3. To train as many members of the extended board as possible given time limitations.

II. PROJECT IMPLEMENTATION AND ACTIVITIES

A. CONTACTING POLITICAL PARTIES AND DCTs

The Phase II project employed one administrative assistant and two training assistants from the Phase I project. The first step was to fax invitations to the numerous political party headquarters in Belgrade. The invitations explained the purpose of IFES' continued presence in Serbia and provided notice of the new poll worker training program. Based on experience from Phase I, it was believed that the best response from participants would most likely occur if contact were made at the local level after initial contact of each of the political party headquarters in Belgrade. After initial contact, follow-up phone calls were also made to encourage greater participation.

IFES Training Specialist Anthony Reissig held meetings with various political party representatives, NGOs, US Embassy representatives, the Republic Election Commission, OSCE, USIS, and USAID officials.

IFES training assistants contacted the Domestic Core Trainers (DCTs) in order to select those that would participate in Phase II training. The next step was to choose three exemplary DCTs (from the 60 trained during Phase I) in each of the five cities where training was to occur in order to start developing training centers. One of these three DCTs in each city would act as a Coordinator of the training session and do any necessary follow-up with each of the local parties after training.

The first concern was to learn if the election law or election procedures had been changed since the September election. Once IFES discovered that no changes had in fact taken place, the training staff proceeded to locate and inventory available training manuals distributed during the previous election.

The DCT Coordinators and IFES training staff procured training sites which were selected by the space necessary to accommodate the number of estimated participants and those that could be used at no

cost due to budget limitations.

B. CHANGES TO TRAINING CURRICULUM

The existing training curriculum from Phase I was altered and training sessions were shortened from a 2-day, 12-hour training session to a 1-day, 2-hour session. It was determined by the Training Specialist that the reduction in training time would be appropriate based on several considerations. Since this project contracted DCTs for slightly over 3 days of actual instructional time, it was decided this would best utilize their limited employment. It was also learned from the representatives of the various political parties that they would not attend training sessions if members of other parties were present. The amended 2-hour sessions would allow trainers to accommodate the specific needs and requests of each individual party and train the maximum number of pollworkers.

Due to the shortened length of each session, role-playing and writing assignments were eliminated. IFES attempted to incorporate demonstrations with election materials (i.e. ballot boxes, sample forms, etc.) in the training presentation but the materials were not forthcoming from the Republican Election Commission.

The District Core Trainers alternated delivery of each section by lecture, interactive participation and manual reference. Training sessions covered the following subject areas.

1. Civic Responsibility of Election Officials
2. About the Elections
3. Election Administration
4. Before Election Day
5. Observers and Watchers
6. Before Voting Begins on Election Day
7. Voting Begins
8. Closing the Polls and Pre-Count Activity
9. Counting the Votes and Reporting the Results

C. SECONDARY TRAINING OF POLL WORKERS

The invitation and evaluation forms (Annex VII) were faxed to the following political parties/representatives:

Table 2.1 Political Party and Representative Contacts

Political Party	Contact
Serbian Renewal Movement (SPO)	Milan Bozic, Vice President
Democratic Party (DS)	Slobodan Vuksanovic, Vice President
Civic Alliance of Serbia (GSS)	Goran Svilanovic, Spokesman
Democratic Center (DC)	Nenad, Spokesman
Social Democracy (SD)	Meho Omerovic, Election Committee
Party of Democratic Action (SDA)	Rasim Ljajic, President
National Council of Sandzak Muslims (MNVS)	Vasvija Gusinac, Head of Cabinet
Alliance of Citizens of Serbia (SGS)	Slavko Parac, President
New Democracy (ND)	Ivan Djordjevic and Tahir Hasanovic
Democratic Party of Serbia (DSS)	Vladeta Jankovic

Democratic Union of Vojvodina Hungarians(DZVM)	Pap Zuzana, Secretary
League of Social Democrats of Vojvodina(LSDV)	Obren Markovic, Secretary
Democratic Alternative (DA)	n/a
Serbian Radical Party (SRS)	Aleksander Vucic, General Secretary
Socialist Party of Serbia (SPS)	Ivica Dacic, Spokesman
Yugoslav United Left (JUL)	Aleksandar Vulin, Spokesman

The faxed invitations received little to no response from the above mentioned political parties. Two interested parties, SPO and DS, sent the most representatives to the training sessions and demonstrated great interest in working cooperatively with IFES. Their enthusiasm is reflected in their attendance numbers. (See Table 2.2) The DCTs contacted local parties and, although much smaller in member size, the parties sent representatives to be trained. Despite IFES' records indicating the training of 284 poll workers, there were actually more that were trained (approx.300) but some attendees refused to sign the document of training completion. Certificates of achievement were offered to enlist greater cooperation and participation by party representatives (See Annex VIII).

Table 2.2 Training Location and Party Representation

Date	City	Party Representation	Number Trained
12.3.97	Leskovac	SPO, DS, DSS	84
12.3.97	Novi Sad	GG	31
12.4.97	Nis	SD	26
12.5.97	Subotica	DS, GG, SRS, SGS, SVM	13
12.5.97	Topola	SPO	66
12.5.97	Bela Palanka	DS	20
12.6.97	Kragujevac	SPO	29
12.6.97	Zrenjanin	DS	<u>15</u>
			284 total

Table 2.3 Party Participation Breakdown

Party	Number of Participants	Percentage of Training Total
SPO	149	52%
DS	62	22%
GG	33	12%
SD	26	9%
DSS	5	1.7%
SVM	4	1.5%
SGS	4	1.5%
SRS	1	0.3%

III. CHALLENGES TO PROJECT IMPLEMENTATION

A. VOTER APATHY

Economic hardships and high unemployment have resulted in a high degree of cynicism and apathy among the average Serbian citizen toward the political system and electoral process. This has

resulted in disinterest for the electoral campaign and little incentive to participate by voting.

B. LACK OF PARTY RESPONSE

Seventeen political parties were faxed invitations to attend training sessions. Only two parties (SPO and DS) responded actively and requested a meeting with the IFES team to support the training project. Their interest is reflected in their attendance at training sessions. It should also be noted that not one party responded to the evaluation form developed by IFES during Phase I training.

C. GOVERNMENT IMPEDIMENTS

The Phase II training team continued to experience the same level of government intimidation during the course of the project as the Phase I team. This was done through recording telephone conversations, and following, photographing and videotaping IFES staff. In addition, the government failed to respond to faxes sent by the IFES Trainer in order to meet and explain the IFES program.

RECOMMENDATIONS FOR FUTURE PROGRAMMING

A. REPUBLIC OF SERBIA

There is a general consensus among IFES team members, both international and local, that the need for technical election assistance and some form of civic education -- including both non-partisan voter and political education initiatives -- is considerable. This consensus became much more fragmented, however, with respect to possible delivery mechanisms and the prospects for success within the current political environment. The very basis of these needs, the restrictive regime in Serbia and lack of truly independent institutions combined with a culture of fear and apathy and a considerable amount of anti-American sentiment, remains so significant as to present serious obstacles to high impact, ie. systemic, programming in the near term.

Should IFES and USAID provide on-going technical election and/or civic education assistance to the Republic of Serbia, the following options may be a basis for discussion and the formulation of a longer-term program:

1. On-Going Training in Election Procedures

IFES could continue to work directly with political parties nationally, but particularly at the local levels, to prepare their representatives to serve on election commissions at all levels and to develop internal poll worker training capabilities. Such training could be expanded to help the parties to prepare policies and concrete proposals on, as well as a strategy for, implementing electoral reforms in the future. Such cooperation might also provide an opportunity to counsel political parties on the development of qualifying criteria, a recruitment mechanism, and a voluntary code of conduct for their appointees to expanded election commission membership. Due to in-fighting at the national level, cooperation with local party chapters seems the most constructive route to follow at this time.

If this type of program is continued, it is suggested that the training program be divided into two classes. One class should be directed at the new poll worker and provide visual examples of various election forms and photographs that depict the different stages of election day procedures. Demonstration materials such as ballot boxes and sealing materials should also be incorporated. The second type of class offered should be directed toward the experienced poll worker. This class could address special and specific problems that could occur throughout the course of an election day and incorporate a question and answer period where party representatives learn through interaction. A number of problems that may arise on election day could be addressed (i.e. what is to be done when there are incorrect ID numbers - should the individual be allowed to vote and who has the authority to decide.).

2. Election Law Working Group

Given the political orientation of the current Republic Election Commission in Serbia and its dependency on the Republic Government and the virtual absence of appropriate and viable NGOs, the issue of an indigenous cooperating partner for IFES becomes central to program planning. As any particular institution has relatively limited access and influence save those sanctioned by the current regime, it might prove a better strategy to create a working group on electoral reform which includes a broad spectrum of opinion leaders and policy experts from parliament, political parties, academic institutions, the legal profession, and local administrations. Such a working group could explore options, prepare concrete proposals, and develop public information and advocacy campaigns for electoral reform.

3. Election Resource Center

There may be some opportunity for IFES to cooperate with one of the political science faculties in Belgrade to establish an Election Resource Center which would house not only comparative materials on election systems but as much information as can be obtained concerning the campaigns and elections process in Serbia. Policy makers, legislators, political party representatives, attorneys, scholars, students, and journalists could locate materials through a bi-lingual database and receive timely updates on pertinent political, legislative, and electoral developments through the Center's WWW Site. Once established, the Election Resource Center might be in a position to sponsor the Election Law Working Group (outlined above), a public service campaign on voter's rights, or any other number of election reform initiatives. From a strategic perspective, the creation of a "library" may provide a low profile means for IFES to re-establish itself in Serbia and subsequently position itself for a more pro-active technical advising and public information role in the future.

4. Voter List Maintenance

The accuracy of voter lists in Serbia was one major concern of observers in recent parliamentary and presidential elections. Discussions with polling site members revealed that they would also like to see improved voter lists. Since voter lists are maintained by municipalities, many of which are now in the hands of the political opposition, it is possible that IFES could find serious partners within local administrations to update and maintain the voter lists. IFES might be able to work on a city-by-city basis, providing consultations and assistance to local officials designated to maintain voter lists. Moreover, voter list maintenance might serve as a springboard for broader assistance to local governments, particularly on the issues of constituent relations and services.

5. Civic Education

The political elite in Serbia contend that voter education is not necessary, citing high voter turn-out rates and familiarity with voting procedures. Yet, IFES team members found a pervasive culture of fear, apathy, and animosity. Voters, and even political participants, displayed limited knowledge of their existing rights, much less an understanding of how to use them most effectively in the current environment. The need for a non-partisan public information campaign highlighting the merits of civic involvement, transparency and accountability of government, and the rights of citizens is clear. Consideration should be given to producing a public information campaign which explores various aspects of the electoral process, both in terms of internationally accepted democratic practices and existing rights and responsibilities within the Serbian context. Such a series, if done through television or radio, would need to touch upon the rights and responsibilities of voters, political parties and their candidates, observers, the mass media, the election commission structure, national and local government authorities, and the police. Supplementary and on-going civic education through NGOs and, if possible, the school system, are vital.

B. SHIFTING ATTENTION AND RESOURCES TO THE REPUBLIC OF MONTENEGRO

Given the experience of IFES in Serbia and the relatively grim prospects for systemic impact in

the short term, serious consideration should be given to shifting both attention and resources from Serbia to Montenegro. Recent developments suggest that a "David and Goliath" offering is in the make. This small republic is poised to have a tremendous influence over its bigger partner, Serbia and over Yugoslavia as a whole. The comparatively liberal environment has provided for the emergence of a meaningful opposition, NGO development, a freer press, and an independent judicial system as witnessed by the Supreme Court's decision to uphold election results deemed free and fair by international monitors despite pressure by the Milosevic administration both within Montenegro and through Federal Government structures. Informal inquiries suggest that the government, in general, and the election commission, in particular, are open to technical assistance. And, the timing of parliamentary elections, slated for May 1998, means that a realistic timetable exists for the implementation of a maximal program.

CONCLUSION

Given the experience of US technical assistance providers leading into the parliamentary and presidential elections, it is clear that undue optimism must be avoided with respect to deliverables, impact, and timetables for the foreseeable future. Toward this end, goals should be extremely modest, programming activities should be both focussed and limited, and rigid timetables avoided.

It is strongly recommended that attention be focussed on Montenegro and a conceptual framework be developed for assistance to Montenegro leading into May parliamentary elections. Should the US seek to maintain its commitment to democracy programming in Serbia, future initiatives should focus on long-term systemic change, ie. legal and institutional reform or civic education, which will likely require significant resources and a longer presence.

REPUBLIC OF MONTENEGRO
VOTER AWARENESS ASSESSMENT
15 NOVEMBER - 5 DECEMBER 1997

I. INTRODUCTION

A. MISSION BACKGROUND

As part of its on-site technical assistance project in Yugoslavia, the International Foundation for Election Systems (IFES) conducted a brief Voter Awareness Assessment to collect information crucial to the development and conduct of non-partisan voter information initiatives leading into parliamentary and presidential elections in the Republic of Serbia. Given the decision by 12 opposition political parties to boycott the elections, the assessment focussed primarily on the impact of the boycott on the changing informational needs of the electorate, the capabilities of political parties and mass media outlets to meet these needs, and the feasibility of US-funded voter education efforts under such circumstances. At the time, the team concluded that: *Combined political and operational circumstances in Serbia rendered the "do-ability" of such efforts virtually impossible . . . [despite] the on-going need for civic, voter, and political education in Serbia. . .*

This assessment, however, was based on information collected and observations made within the confines of the Republic of Serbia and with respect to the September 1997 elections (presidential elections requiring run-offs in October and December). As such, it did not reflect a string of events simultaneously underway in the neighboring Republic of Montenegro. The split of the ruling Democratic Party of Socialists, the presidential election victory of opposition candidate Milo Djukanovic, and Montenegro's relatively liberal political environment vis-à-vis Serbia, combined to create both opportunities and momentum for substantial reform and a fertile programming environment for USAID funded projects. Informal inquiries suggested that the government, in general, and the election commission, in particular, were open to technical assistance. In response, IFES deployed a three-person team to the Republic of Montenegro in November 1997 to expand the scope of its original Voter Awareness Assessment.¹²

B. MISSION OBJECTIVES

These are the objectives of IFES' Voter Awareness Assessment in Montenegro:

1. Analyzing the post-presidential election environment, particularly the impact of subsequent political maneuvering by republican and federal authorities regarding the legitimacy of the election results on the prospects for a peaceful transition of power and the conduct of minimally free and fair parliamentary elections in the Spring of 1998;
2. Assessing on-going weaknesses in Montenegro's electoral system which threaten to undermine its actual and perceived efficiency, transparency, and integrity;
3. Determining the changing informational and educational needs of the country's citizenry, including traditionally disadvantaged groups such as ethnic minorities, women, youth, and rural dwellers in an increasingly competitive political environment and in the midst of substantive electoral reforms;
4. Identifying opportunities for constructive cooperation leading into the parliamentary election cycle and

¹² This activity was made possible by a no-cost time extension of Contract No. AEP-5486-I-6003-01, Delivery Order No. 803.

in the longer term.

C. SCOPE OF MISSION

The assessment plan sought to capture information from original sources through interviews and English language translations of pertinent documents and legislation. During the three-week mission, IFES team members held a series of consultations with more than 50 government officials, election administrators, political party leaders, student organizers, NGO activists, and media representatives in the capital city of Podgorica and coastal towns of Budva, and Ulcinj.¹³ The team was provided with considerable access to opinion leaders and decision-makers, typically conducting meetings at the ministerial level; with chairmen and executive boards of political parties, among them members of Parliament; editors-in-chief; faculty deans, and justices of the Constitutional Court. The team was also provided with copies of original and revised draft legislation on elections, voter registries, political party financing, and public information.¹⁴

D. COMPARATIVE EXPERIENCE: SERBIA AND MONTENEGRO

The reception of the IFES mission in Montenegro proved to be the antithesis of its experience in Serbia. Contrary to the environment of suspicion and antagonism under which IFES advisors worked in Serbia, their counterparts in Montenegro were able to engage in a constructive dialogue both at official and informal levels and in an atmosphere of relative transparency. Beyond the levels of access previously noted, information ranging from election results, demographic statistics, and polling data to political party platforms, government reports, draft legislation, and court rulings were provided upon request. In some cases, information was specially compiled on the basis of specific inquiries by IFES representatives. Although unsolicited, media outlets provided steady coverage of the team's activities which were presented in a positive light. This contributed to high awareness levels of IFES' mandate, facilitated the establishment of cooperative relationships and the exchange of information.

¹³ A complete list of contacts can be found in Annex IX of this report.

¹⁴ Copies of these documents can also be found in the Annexes of this report.

II. BACKGROUND

A. COUNTRY BACKGROUND

The tradition and history of statehood in the area of modern day Montenegro dates back a thousand years. The name Montenegro first appeared in the 15th century. It is believed that on-going resistance to nearly five centuries of Turkish invasions cultivated and strengthened the notion of statehood and in 1878, Montenegro was internationally recognized as a state. It formally became a kingdom in 1910 under the rule of Nikola I.

As a result of the post-World War I peace concluded at Versailles, the kingdoms of Serbia and Montenegro, as well as several other provinces of the dissolved Hapsburg and Ottoman Empire, were combined into a common Slavic state, the Kingdom of Yugoslavia. Upon the outbreak of the Second World War, Yugoslavia fought alongside of the Allied Forces. After the war, Montenegro became one of six constituent republics of the Socialist Federal Republic of Yugoslavia. Under this framework, Montenegro retained authority over its administrative and budgetary matters and its citizens were able to preserve their historical and cultural identity.

Beginning in 1991, the Socialist Federal Republic of Yugoslavia began to disintegrate as the republics of Slovenia, Croatia, Bosnia and Herzegovina, and Macedonia seceded and formed independent states. In 1992, the citizens of Montenegro, through the referendum process, opted to remain within Yugoslavia along with the Republic of Serbia. As a result, the Federal Republic of Yugoslavia was established with each of the constituent republics enjoying *sovereign and equal status* according to the Constitution adopted by the Federal Parliament on 27 April 1992. In fact, however, Serbian authorities have dominated federal power structures responsible for foreign, fiscal, and customs policies and national defense as well as the adjudication of constitutional disputes.

Differences in policy orientation and political allegiance emerged in the Federal Parliament by the end of the year. The Montenegrin federal parliamentary delegation twice supported Federal Prime Minister Milan Panic in votes of no confidence orchestrated by Serbian President Slobodan Milosevic. As early as 1993, the nominal nature of Montenegro's equality and diverging political agendas led some to call for growing sovereignty for Montenegro either within or outside the Yugoslav Federation. By late 1997, frustration over Montenegro's inability to influence federal policies, economic isolation and decline, and increasing federal involvement in issues deemed to be internal republic affairs, particularly the unwillingness of the Milosevic regime to recognize the victory of opposition candidate Milo Djukanovic in presidential elections, led to widespread support for such calls, which were increasingly expressed at the highest levels of the Montenegrin Government.

B. ORGANIZATION OF THE STATE

The Constitution of the Republic of Montenegro was approved by the Assembly of Montenegro on 12 October 1992. It established Montenegro as a democratic and sovereign state with power vested in its citizens. Any changes to the Constitution or to Montenegro's borders are subject to a nationwide referendum. State structure is organized according to the principle of separation of powers, with judicial and legislative powers operating independently.

In accordance with the Constitution, the Assembly consists of representatives elected through direct and secret ballot and on the basis of a general and equitable voting right. One representative is elected per every 6000 voters for a term of four years. The Assembly is responsible for: adoption of the Constitution; appointment and recall (through a vote of no confidence) of the Government and approval of its program; enactment of legislation; organization of state administration; enactment of the national budget; ratification of international treaties within the authority of the Republic; appointment of judges and state prosecutors; and announcement of public referenda. Regular sessions of the Assembly are convened twice a year with the possibility of additional extraordinary sessions. An extraordinary session is convened at the request of not less than one-third of the representatives or at the request of the President of the Republic and the Prime Minister. A quorum of 51% of the representatives is required for the Assembly to function and legislation is considered passed if approved by a simple majority. Decisions affecting citizens' freedoms and rights, the electoral system, taxes, state symbols, dismissal of the President, a vote of no-confidence in the Government, public referenda, and adjustments to its own terms and rules require an absolute majority. The right to introduce bills is reserved for representatives, the Government, and at the initiative of at least 6000 voters. The Assembly can be dissolved if it fails to appoint a Government within 60 days of receiving the President's nominations or if it ceases to perform its duties as prescribed by the Constitution for a prolonged period.

Currently, five political parties are represented in the Assembly of Montenegro. The breakdown of seats is as follows:

Political Party	Mandates	Comments
Democratic Party of Socialists	45 Seats	The Party has since broken into two competing factions represented by former President Momir Bulatovic and current President Milo Djukanovic.
The Coalition Narodna Sloga	19 Seats	This is a coalition of the People's Party and the Liberal Alliance. The Coalition has since collapsed and the People's Party has further broken down into two factions.
Democratic Union of Albanians	2 Seats	Albanian party
Democratic League of Albanians	2 Seats	Albanian party
Party of Democratic Action	3 Seats	Muslim-based Party

As noted in the commentary section, the political situation within the Assembly has become increasingly convoluted as a result of factionalization within the major parties and coalitions.¹⁵

The President is also elected on the basis of four-tail suffrage - general, equal, direct, and secret

¹⁵ More information on the broader political party situation can be found in Chapter 4 of this report.

ballot - for a term of office of five years. Duties of the presidency include: representation of the republic domestically and internationally, promulgation of legislation, nomination of the Government, calling of legislative elections, and proposing public referenda. The President is bound to promulgate legislation adopted by the Assembly within seven days of its passage or request that it conduct a second vote on the same piece of legislation. Legislation which is subsequently passed on the basis of such a request must be promulgated. The President can be recalled by the Assembly based on findings of the Constitutional Court that he/she has breached provisions of the Constitution.

The Government is composed of a Prime Minister, one or more deputy prime ministers, and ministers. The nominee for Prime Minister must present his/her recommendations for ministerial positions and the Government program for approval of the Assembly. Failing approval, the President must propose a new nominee for Prime Minister within ten days. The Government is responsible for: the setting and conduct of domestic and foreign policies; introduction of executive acts and regulations necessary to enforce legislation; development of the state budget; conclusion of international treaties within the authority of the Republic; organization of the state administration, supervision of ministries and state administrative structures, and enactment of decrees during a state of emergency. The Assembly may take a vote of no confidence in the Government based on a motion by not less than ten representatives and within three days from the date of the motion. If the Government receives a vote of confidence, a proposal for a vote of no confidence for the same reasons cannot be made before a period of 90 days from the previous vote. A Government which has lost a vote of no confidence, or one whose mandate has been revoked due to the dissolution of the Assembly, remains in office until the election of a new Government. The affairs of state are conducted by the ministries, secretariats, and other administrative authorities. Montenegro is divided into 21 municipalities, each of which exercises power on the basis of local self-government.

The judicial branch operates independently from legislative and executive branches of Government. Courts of law adjudicate in council and trials are public. Judges enjoy life tenure. The Supreme Court is the court of highest instance in the Republic. Public prosecutors are appointed for a term of five years and perform the tasks of criminal prosecution, apply legal remedies for protection of constitutional and legal rights, and represent the Republic in property and legal matters. It also handles complaints regarding omissions from and inaccuracies in the voter registry.

The Constitutional Court: decides on the conformity of legislation, executive acts, and regulations with the Constitution; determines whether the President has exceeded the bounds or acted contrary to the Constitution; hears complaints regarding the violation of constitutional rights; rules on conflicts between branches and levels of state authority; decides upon the conformity of political party and citizen group statutes with the Constitution and can ban a political party or citizen's group; and rules on electoral disputes. The Constitutional Court is comprised of five justices who serve terms of nine years and are not eligible for re-appointment. The President of the Constitutional Court is elected from among the justices for a term of three years. Decisions of the Constitutional Court are reached by a majority vote of the justices and are binding and final. Decisions of the Constitutional Court, including opinions of justices not siding with the majority are published.

C. RECENT POLITICAL DEVELOPMENTS

The formal split of Montenegro's ruling Democratic Party of Socialists (DPS) in Summer of 1997

was a watershed event bringing the country to the brink of constitutional crisis while simultaneously initiating a thorough restructuring of the political scene and creating a window of opportunity for tangible democratic reforms. Increasingly, public disputes within the DPS emerged during the Spring when President Bulatovic began urging the ouster of his rival within the party, Prime Minister Milo Djukanovic, both from the Government and from the party leadership. This rift culminated in July 1997, when Bulatovic was removed as president of the party by the pro-Djukanovic faction. In August, Bulatovic and Djukanovic were both certified as presidential candidates by the Republican Election Commission (REC). Defending its decision, the REC argued that the candidates represented two distinct political parties -- rather than mutually opposed wings of the same party -- since Bulatovic's DPS was registered in Belgrade as a federal party and Djukanovic's DPS was registered in Podgorica as a republican party.

Prime Minister Djukanovic subsequently lodged a complaint with the Constitutional Court of Montenegro, refuting this logic and quoting Article 5 of Montenegro's election law which stipulates that a political party can nominate only one candidate for the presidency of the Republic. On the basis of this complaint, the Constitutional Court cancelled and overruled the decision of the REC, withdrawing the certification of Momir Bulatovic as a candidate. In its ruling, the Constitutional Court noted that only political parties registered in Montenegro were entitled to nominate candidates.

In response, President Bulatovic, an ally of Yugoslav President Slobodan Milosevic, filed a complaint with the Federal Constitutional Court claiming that his constitutional right to stand as a candidate had been violated. On 10 September, the Court declined to hear the case but opted to abolish Article 5 of Montenegro's election law, thus clearing the way for Bulatovic's certification as a candidate. The REC complied, recognizing Bulatovic's candidacy. This decision sparked a constitutional crisis which is still ongoing. During a marathon session of the Assembly of Montenegro, two-thirds of the representatives supported a proposal to reject the Federal Constitutional Court's arbitration of the matter. The ruling was called "*interference of the Federal Constitutional Court in Montenegro's internal legal system.*" A spokesperson for the Bulatovic faction responded that: "Momir Bulatovic is the official and rightful presidential candidate of the DPS and in failing to recognize this the Government of Montenegro has violated its own constitution."

The campaign and election process was to prove a prelude to increased polarization within Montenegrin society. While Bulatovic won the first round of voting, he failed to obtain the required absolute majority. In the second round of balloting, characterized by heavy voter turnout, Djukanovic emerged the winner by 5,218 votes. The Bulatovic campaign cried foul play and lodged a series of complaints with the Constitutional Court of Montenegro. Bulatovic cited modifications to the voter registry between the first and second rounds of elections and the extension of voting hours at many polling stations as violations of the election law. According to the REC, since a new procedure requiring voters to sign the voter registry upon receipt of their ballot resulted in prolonged processing of voters, many of whom could not be accommodated during regular voting hours, some leniency was required.¹⁶ With respect to the voter registry, the Supreme Court opted to allow changes to the lists prior to the second

¹⁶ Previously, election officials circled the ordinal number of the voter when providing them with a ballot. This modification was a positive change safeguarding against possible falsification of results at the polling site level. In addition, the combination of this practice and the size of some of the polling sites which were responsible for as many as 2,500 voters certainly contributed to the time pressures.

round as a result of inaccurate and outdated voter registries during the first round in order to avoid disenfranchising many voters.¹⁷ While the Law on the Register of Electors prohibits changes to the voter registry within 48 hours of election day, it is silent about modifications between rounds of elections. According to the OSCE Observer Report:

It is acknowledged that if the additional registration exercise had not taken place many thousand of citizens would have been denied their right to vote. However it is difficult to maintain a high level of transparency when such measures are undertaken in so short a period. No matter how well intended and non-discriminatory, such a practice should be avoided at future elections.

Despite these complaints, the REC stood by its results and the Constitutional Court of Montenegro declined to hear any of the cases. US and European observer delegations endorsed the results as "...reflecting the will of the Montenegrin people."

Bulatovic refused to accept the integrity of the election and has sought to contest the results both through public demonstrations and federal structures. According to various news reports, he called upon his supporters to arm themselves against the incoming "criminal regime" which rode to power on the support of "Muslims and Albanians," causing the situation in Montenegro to become increasingly unstable throughout the Fall. Bulatovic, for his part, had insisted that he would not transfer power to Djukanovic on 15 January 1998 but would return it to the people. On 12 December, the Yugoslav federal prosecutor said that the Supreme Court of Montenegro violated federal law when it ordered the updating of the voter registry prior to the run-off elections. This sentiment was repeated by a spokesperson for the prosecutor's office on 30 December. Before the new year, the Assembly of Montenegro passed a resolution condemning the involvement of federal authorities in republican matters and blocking the implementation of such decisions in the Republic. On 6 January 1998, a Belgrade Court called into question the validity of the results. In response to the continued incursions of federal authorities into what are perceived to be internal matters, the Deputy Prime Minister of the Government of Montenegro threatened to propose a referendum for Montenegrin independence if Montenegro's equal status within the Federation is not respected by federal authorities.

As Bulatovic called for mass demonstrations prior to Djukanovic's scheduled inauguration on 15 January, the Chairman of the Assembly of Montenegro appealed for calm while the President of the Constitutional Court of Montenegro voiced concerns that the out-going president was attempting to use mass protests as an excuse to declare a state of emergency in order to prolong his own rule. Beginning on 12 January, Bulatovic supporters congregated in the streets, issuing an ultimatum for new presidential and parliamentary elections on 15 April. While police retained a low profile, weapons searches and seizures were conducted. The Army refused to become embroiled in the political crisis but a series of arrests followed. At this time, it appears that the immediate threat of further violence has abated.

Despite the crisis, elites within the country roundly welcome the split of the DPS as a catalyst to political dialogue, meaningful reform, opening of the mass media, and independent decision-making. It

¹⁷ The Supreme Court reportedly received 13,000 complaints from voters who were prevented from participating in the first round of elections.

was the impression of one party leader that before the split, nothing was possible. In this sense, the political scene has been irrevocably changed. At the same time, the support of nearly 50% of the electorate for maintaining the status quo reveals the difficulties ahead as Montenegro struggles to join the democratic international community.

III. ELECTION FRAMEWORK

A. CONSTITUTION

The legal foundation for democratic systems is often based on a hierarchy of rights. The Montenegrin system is founded on basic rights guaranteed by the Constitution. The opening provisions of the current Constitution establish Montenegro as a democratic state based on the rule of law. Article 3 expressly prohibits the imposition or recognition of any authority which does not result from the freely expressed will of the citizens. Voting rights are provided for under Article 32, which stipulates that citizens who have reached the age of 18 have the right to elect and be elected to public office. It should be noted that the Law on Election of Councilors and Representatives places further conditions upon this right (see below). Suffrage is exercised according to a general, equal, direct, and secret ballot. Citizens are also afforded the rights of initiative, representation, and petition. Additional rights and prohibitions affecting campaigns and elections include:

Article 28: Freedom of movement and residence;

Article 34: Freedom of conscience and expression;

Article 35: Freedom of information;

Article 37: Prohibition of censorship;

Article 39: Freedom of assembly;

Article 40: Freedom of association;

Article 41: Prohibition on political organization in state institutions.

The calling of elections is the responsibility of the President of the Assembly in the case of elections to the Presidency of the Republic. Elections for the Assembly are called by the President of the Republic.

B. LAW ON ELECTION OF COUNCILORS AND REPRESENTATIVES

Legislative elections at the republic and municipal levels are governed by the "Law on the Election of Councilors and Representatives." This law also provides the legal foundation for the protection of voter's rights. It was passed in 1992 and subsequently revised in 1995 and 1996. During the period of the assessment, the law was in the process of review by the Multi-Party Working Group on Electoral Reform (more below).¹⁸ Major differences between the current law and draft revisions as of 10 December 1997 appear in italics. Main provisions of the 1996 law include:

¹⁸ Since, the law was revised and passed by the Republican Assembly on 17 February 1998. IFES has based comments on the draft laws obtained during the assessment mission.

Term of Office: Four years.

Calling of Elections: Elections are called by the President of the Republic.

Franchise Requirements and Privileges: Voters must have reached 18 years of age and have resided in the republic at least 6 months prior to election day and have civil (mental) capacity to vote and to be elected. Elections are conducted according to four-tail suffrage: general, equal, direct, and secret.

Constituency Delimitation: Councilmen and representatives are elected in constituencies on the basis of lists proposed by political parties, coalitions, and citizen's groups. Constituencies for municipal and republic elections are determined by special acts of councils and the Assembly. Fourteen constituencies were established for elections in 1996. *(Draft revisions to this law suggest that adjustments to the system of proportional representation will be made at the republic level to ensure representation of Montenegro's Albanian minority as the Assembly prepares to introduce a single national constituency for the election of its representatives. Current language envisions the creation of a special Albanian constituency and a waiver of threshold requirements).*

Election Commission Hierarchy: Elections are administered through a three-tiered hierarchy including the Republican Election Commission, municipal election commissions, and polling boards which are comprised of permanent and expanded membership *(Draft revisions to this law would seek to drop the requirement that core members of election commission be judges and would also introduce multi-party representation into the core membership).*

Election Campaign: Elections must be held within 15 days of the expiration of the terms of sitting councils and the Assembly. The campaign period is to be from 60 to 100 days after elections are called.

Nomination Requirements: Political parties, separately or in the form of coalitions, registered in the Republic of Montenegro, as well as groups of citizens are entitled to nominate their slate of candidates. Nomination through political parties is set by this Law and through the internal rules of procedures of those parties.

Signature Requirements: Nominating entities are required to collect signatures in support of the nominated slate of candidates. The number of signatures required is based upon the number of voters in a given constituency, ranging from 25 in a constituency of 6,000 voters to 300 in a constituency of 60,000 voters. *(Draft revisions to the law would require candidates to collect signatures equivalent to 1% of the total number of voters in a given constituency).*

Rights of Nominating Entities: Political parties, coalitions, and citizens' groups which meet the signature requirements are entitled to appoint representatives to serve on the expanded membership of election commissions and polling boards; to receive equal space/time for presentation of their platforms in state media; to organize public gatherings; prepare election literature; to purchase political advertising; and to receive public funding according to a formula based on the net average salary during the month preceding elections and the number of constituencies in which each entity is forwarding a slate of candidates *(Draft revisions to the law would defer decisions about public financing of campaigns to a decision of the Assembly. More below).*

Campaign Financing: Combined private and public financing. Nominating entities have the right to use their own funds (and those of their candidates) and to collect donations for campaign purposes. No restrictions, including the imposition of ceilings on contributions or expenditures, are applied to private donations in the law nor is there any requirement for periodic and final reporting of campaign contributions and expenditures. *(Stand- alone legislation on the financing of political parties is also under revision, more below).*

Complaint Adjudication: Campaign and election-related grievances are heard and administrative/legal remedies awarded through the election commission structure and the Constitutional Court. Voters, candidates, and nominating entities are entitled to file complaints with the pertinent election commission. Administrative remedies must be exhausted through the commission structure before proceeding to the Constitutional Court. Complaints to commissions must be filed within 24 hours of the alleged violation and decisions rendered with 48 hours of filing. Should an election commission fail to reach a decision within that timeframe the complaint is deemed valid. Complaints must be filed with the Constitutional Court within 24 hours of the pronouncement of a decision by the Republican Election Commission and must be ruled on by the Court within 48 hours of filing.

Polling Site Procedures: Voting hours are from 7:00 am until 8:00 pm. Ballots are cast at polling sites assigned to voters on the basis of their residence. Prior to the official opening of the polls, ballot boxes are checked in the presence of the first voter and sealed. Control sheets verifying this process are placed in the ballot box. Voters must present their suffrage certificate (invitation to vote) and identification. The Chairman then circles the ordinal number of the voter in the extract of the voter registry, explains the polling procedure, and hands him/her the ballot. Secrecy of the ballot is to be preserved. The voter makes his/her choice by circling the ordinal number in front of his/her choice, the title of the electoral list, or the candidate's name which appears first on the list. Upon casting his or her ballot, the voter is required to leave the polling site premises. In the case of disturbances, the Chairman can invite the police to restore order. Technical violations at the polling site can result in closure of the site, nullification of results at that site, and the conduct of repeat voting. Provisions exist for voting outside the polling site and are further elaborated upon by regulations of the Republican Election Commission. *(Draft revisions to this law would require voters to sign the extract of the voter registry prior to receiving their ballots rather than having an election official circle their ordinal number).*

Election Observers: No language exists in the law regarding international or domestic observers. To date, the Republican Election Commission has provided for the accreditation of international observers through its own regulations.

Election Results: Ballots are counted at individual polling sites. Upon determination of the results, election data is entered into the record of the polling board, which is signed by all of its members. All members of the polling board are entitled to a copy of the record. Not later than 18 hours after closure of the polls, polling boards must deliver to the pertinent municipal election commissions their records and election materials. Municipal election commissions are responsible for the aggregation of votes within their constituency and the determination of results of municipal elections. This process must be completed within 12 hours of receiving results from the polling boards within its jurisdiction. Municipal election commissions forward reports from the polling boards and a record of their work to the Republican Election Commission. The Republican Election Commission is responsible for determination of election results to the Assembly.

Distribution of Mandates: Political parties, coalitions, and citizens' groups receiving at least 4% of the vote are awarded mandates in the Assembly. Mandates are distributed in proportion to the number of votes won. One half of the mandates won by each nominating entity are distributed according to the rank ordering of the list. The remainder are distributed based on a decision of the nominating entity.

Publication of Results: The overall results of the election of representatives to the Assembly must be publicized by the Republican Election Commission within 24 hours of receiving the reports of all municipal election commissions. Results according to polling station must be published at least seven days prior to constituting the new Republic Assembly. The overall results of the election of councilmen must be publicized by each constituency within 24 hours of receiving all reports from polling boards within their jurisdiction. Results of election of representatives and councilmen are published within the official gazettes of the Assembly and the Municipalities not later than 15 days after polling day.

While this law provides a reasonable framework for participation in elections and for their conduct, the absence of clarity, consistency, and detail throughout this and related legislation -- despite draft revisions prepared as of the date of this assessment mission by the Multi-Party Working Group on Electoral Reform -- undermines, if not precludes, the correct and uniform interpretation of the law and the efficient administration of elections. This, in turn, may jeopardize the integrity, actual or *perceived*, of the election process.

C. LAW ON THE REGISTER OF ELECTORS

The "Law on the Register of Electors" was originally passed in 1992 and was being reviewed by the Multi-Party Working Group on Electoral Reform at the time of the assessment.¹⁹ Revisions to the law were aimed at rectifying on-going problems with the accuracy of voter's lists (extracts of the Register of Electors) and accommodating possible computerization of the Registry. The 1992 law establishes the general procedures for updating and maintaining the Register of Electors and the preparation of extracts of the registry for the conduct of elections at polling stations. According to the law, the Register of Electors is a public document which serves as a record of citizens with electoral rights. It is obligatory for the Registry to be updated during an election year. All citizens who have reached the age of 18 are to be entered into the Registry according to their place of residence. Entries and deletions to the Registry can be undertaken at the request of a voter and upon the provision of other valid identification evidence.

Within three days of the calling of elections, the entity responsible for the Register of Electors shall inform citizens, through public notice, of their right to inspect the Registry and request changes, amendments, or corrections. Refusal to make the requested modifications by the responsible entity can be challenged in the Supreme Court. Modifications to the Registry are concluded not later than 15 days prior to elections. No subsequent changes are permitted except in the case of a court order and not later than 48 hours prior to election day. Upon the closure of the Registry, the number of electors per constituency is determined by the municipal election commissions. Based on this data, the Republican Election Commission determines the number of voters in the country at large. Verified extracts of the Register of Electors for each polling station are prepared by the entity responsible for maintaining the

¹⁹ A Law on Voter Registries was subsequently passed on 11 February 1998.

Registry and forwarded to municipal election commissions.

Although the law does not stipulate which entity is responsible for the Register of Electors, updating of the Registry is performed by secretariats of elections (not to be confused with the municipal election commissions) within each municipal authority and in cooperation with the Ministry of Justice and the Ministry of the Interior. Experience suggests that municipal authorities have not been diligent in maintaining the Registry and that the intervention of republic level ministries has been necessary to minimally prepare it for elections. Currently no central registry exists. Draft revisions to the law would require that the Register of Electors be updated every year, provide for a central and computerized Registry, entitle nominating organizations to receive a copy (in the form of computer diskette) of the Register of Electors, and establish individual responsibility and introduce penalties for failure to maintain a current and accurate Registry.

D. LAW ON FINANCING OF POLITICAL PARTIES

The Law on Financing of Political Parties was passed in 1993 with the intent of strengthening political parties, ensuring a more equitable playing field during election campaigns, and as a means of regulating campaign financing. The law is currently under review in the Multi-Party Working Group on Electoral Reform. According to the current law:

Political parties are permitted to raise funds for their activities through membership dues, contributions, income from their own assets and entrepreneurial activities, credits, and endowments and inheritances as well as budget allocations as provided for in the Law. Specifically, the Republic and municipality governments provide subsidies for the work of political parties whose candidates have been elected as representatives and/or councilmen. Subsidies are also provided to cover some of the expenses of election campaigns of political parties whose slates of candidates have been certified by the responsible municipal or republic election commissions. The amount of state subsidies is based upon the availability of funds, but cannot be lower than 0.3% of total budget revenues for the year.

With respect to funds allocated to parties with mandates in legislative bodies, 30% of the total are distributed equally among all parties with the remainder distributed proportionate to the total number of seats of each party. Public financing of election campaigns in the year in which elections have been called is distributed according to the following formula: (1) One-third of available funds is provided to political parties which have expressed their intent to forward a slate of candidates in the election campaign; (2) One third of available funds is provided to political parties whose slate of candidates has been certified by the responsible municipal or republican election commission; (3) One third of available funds is awarded to political parties having won mandates in proportion to the total number of seats won.

Political parties with certified slates of candidates are permitted to privately finance election campaigns through their own resources and the solicitation of contributions. Fundraising activities can be undertaken on the official premises of the nominating political party; in other public places, provided permission has been provided by the Ministry of Internal Affairs; at public events; or by means of direct deposit to a specified account. Campaign finances can be used to cover the costs of election propaganda including posters, advertising, media broadcasts, and publications. Language of the revised draft of the legislation did not specify a ceiling for campaign expenditures as of 10 December 1997, although it did clarify that a ceiling would be applied to expenditures if not contributions. No restrictions appear within

the Law with respect to donors or the amount of their contributions. There is also no language concerning the handling of in-kind contributions.

Rather than outlining specific reporting and public disclosure requirements within the text of the Law, Article 10 merely stipulates that all parties within the Assembly will enter into a special agreement ensuring compliance with limits set for campaign expenditures within 15 days of the calling of elections and that this agreement shall specify the manner of controlling campaign financing. The law does require political parties to keep records of their revenues and expenditures and that such records be subject to control of the responsible authority. The entity charged with monitoring and enforcing of campaign finance regulations is not specified nor are parties required to provide periodic campaign finance reports during the election campaign nor a final report upon its conclusion. There are also no provisions for the contents of such records and reports to be disclosed to the public.

The Law does apply equally to coalitions established for the purpose of nominating joint slates and to citizens' groups forwarding candidates for elections to municipal councils and Assembly of the Republic of Montenegro. While penalties are established for violations of the law, the lack of detail with respect to contributions and expenditures and the absence of routine reporting requirements suggests that if penalties are applied at all, they will be subject to arbitrary application.

E. ELECTION ADMINISTRATIVE STRUCTURES

Elections in Montenegro are administered according to a three-tiered system of election bodies which consists of the Republican Election Commission (REC), 21 municipal election commissions (MECs), and polling site boards (PSBs). There were 879 PSBs at the recent presidential elections. This system is established through the "Law on Election of Councilmen and Representatives". The republic and municipal commissions operate on a permanent basis appointed for four year terms to coincide with the mandates of the respective legislatures. Under the current system, election commissions and polling boards operate according to core and expanded membership. Core members of election commissions, ie. those working on a permanent basis, are appointed by the republican and municipal assemblies and must come from the judiciary or the legal profession. The chairmen and their deputies must be judges. The Secretary of the REC must be a full-time employee of the Republican Authority and an election expert. Core members of polling site boards are appointed by their respective MECs at the time of elections but not later than 10 days prior to the election. According to the REC, in the core and expanded form, election commissions and polling boards engaged approximately 10,000 people during the administration of recent presidential elections.

The expanded membership of election commissions and polling site boards is constituted upon the certification of nominating entities participating in a given election. Political parties, coalitions, and citizens' groups which have met the requirements for ballot access are entitled to nominate a representative to the electoral body which certified their slate and each subordinate electoral body, ie. political parties participating in national elections can appoint members to the REC, MECs, and PSBs, while those participating in municipal elections can appoint members to the certifying MECs and PSBs in its jurisdiction. Any nominating entity which has failed to appoint its authorized representative within five days of the election forfeits the right to representation on the electoral body. Expanded members are permitted to serve on commissions and polling site boards through the end of elections, although their role relative to the core membership is not sufficiently clarified in the Law. Nonetheless, the inclusion of

political party representatives on electoral bodies is consistent with the basic features of competitive elections and provides an important mechanism for control of the election process. It should be noted that draft revisions to the Law would seek to extend multi-party representation to the core membership of election commissions and polling site boards and would eliminate requirements that core members and, in particular, the leadership of the commissions be judges on the basis that this practice violates the separation of powers principle.

The permanent membership of the Republican Election Commission is comprised of the Chairman, Secretary, and five Members. The REC 's activities are public and its decisions rendered by a majority of members.

General responsibilities of the commission include:

1. The correct and uniform application of laws governing elections and the conduct of elections;
2. Monitoring compliance with and enforcing laws governing elections;
3. Coordinating and supervising the work of MECs;
4. Determining the standard form of election materials;
5. Issuing guidelines on election procedures provided for in the law;
6. Identifying election documents which must be submitted to the commission;
7. Determining the legal conformity of supporting documents and signature lists in support of a nominated slate of candidates by a political party, coalition, or citizen's group for election of representatives to the Assembly and certifying those lists which have been submitted in compliance with the requirements of the law;
8. Establishing the results of the election of representatives and number of votes received by each slate of candidates as well as the number of seats to be allocated to each nominating entity;
9. Publishing results of elections to the Assembly as well as results according to each polling site;
10. Submitting a report on the election of representatives to the Assembly of the Republic;
11. Issuing certificates to elected representatives.

The permanent membership of municipal election commissions consists of a Chairman, Secretary, and three members. Its responsibilities include:

1. The correct application of laws governing elections and conduct of elections;
2. Organizing technical preparations for the administration of elections;
3. Setting up polling sites;
4. Appointing the membership of polling boards;
5. Determining the number of ballots required by each polling site;
6. Judging whether supporting documents and signature lists in support of a nominated slate of candidates for municipal elections were submitted in conformity with the law and certifying slates which comply with the requirements of the law;
7. Determining the result of elections for municipal council, the number of voters won by each slate of candidates, and the distribution of seats to nominating entities;
8. Issuing certification to elected councilmen;
9. Determining results of election of representatives within its jurisdiction and reporting those results to the Republican Election Commission;
10. Publicizing results of elections to the municipal council;

11. Submitting a report on the election of councilmen to the municipal council.

The core membership of each polling site board consists of a Chairman and two members. It is responsible for the processing of voters and conduct of balloting on election day, ensuring the regularity and secrecy of the balloting process, maintaining order within the polling site, and establishing the results of voting. More detailed rules concerning the work of polling site boards are prepared by the Republican Election Commission. In accordance with the law, each polling site may be responsible for as many as 2,500 voters on election day.

On the surface, Montenegro's election administration structure follows traditional lines, with election commissions cooperating with municipal authorities in the technical and logistical preparations of elections, and with commissions, courts, and the criminal justice system handling the adjudication of complaints and administrative and legal remedies. Upon closer inspection, however, the IFES team found considerable diffusion of administrative responsibilities both vertically and horizontally. Throughout the course of its consultations, various administrative components of the electoral process were found to be the responsibility not only of the REC, MECs, and likely municipal authorities, but also the Ministry of the Interior, the Ministry of Justice, the Secretariat of Law, the Secretariat of Development and their affiliates at local levels. There is clearly confusion, if not outright disagreement, about the responsibilities and mandate of various state structures. This situation probably stems from the uncertainties of all election legislation concerning specific responsibilities of authorities and leads to an inefficient administrative system.

Representatives of the REC, in particular, noted that they were bombarded with requests and complaints regarding issues over which they had no control. They cited problems brought to their attention concerning voter registries, which were a particular point of contention in the recent presidential elections, noting that they had no responsibility for updating voter registries and that this function fell within the jurisdiction of the Ministry of Justice in accordance with the "Special Law on the Responsibility of the Ministry of Justice." The Secretariat of Development, a technical support and MIS group, has developed a proposal for the creation of a centralized and computerized Register of Electors and intends to undertake the project of updating the registries as well as training and supervising personnel, and overseeing the Registry's maintenance, although it currently has no legal mandate to do so. The REC admitted that it would be willing to assume the responsibility of maintaining the central Registry if one were to be created. In the area of training, both the REC and the Secretariat of Law perceive a role in the training of election officials and undertook such activities leading into the recent presidential elections.

Beyond this rather convoluted institutional arrangement, the Republican Election Commission has not been included in the reform process, along with other practitioners, from the electoral reform process. At the time of the IFES team visit, the REC had not been invited to participate in or advise the Multi-Party Working Group on Electoral Reform. They had not received copies of draft revisions. They were not aware of any comprehensive analysis of the presidential election process with an eye toward legislative modifications and technical adjustments. While it is clear that the Working Group views the REC as an organization packed by Bulatovic supporters, this is not entirely correct. In fact, there are several members on the commission who have extensive professional experience and constructive and detailed recommendations on improving the electoral process as well as the workings of the election commission structure. This decision to eliminate the current commission is anticipated to limit the quality of amended legislation.

F. AGREEMENT ON MINIMUM PRINCIPLES FOR DEVELOPMENT OF A DEMOCRATIC INFRASTRUCTURE

In response to the formal rift within the DPS and the growing political crisis in Montenegro, an agreement was drafted by Montenegro's political parties on the "Minimum Principles for Development of a Democratic Infrastructure in Montenegro."²⁰ This agreement was signed on the 1st of September by all of Montenegro's political parties represented in the republic and federal parliaments as well as representatives of government with the sole exception of Momir Bulatovic and his wing of the Democratic Party of Socialists. Although the agreement was belatedly signed by the Bulatovic wing of the party, their commitment to its stated aim *to overcome the crisis by accelerating democratic processes on the basis of a consensus of all political and social groups on the basis of democratic values* must be called into question. His support of mass demonstrations prior to President-elect Djukanovic's inauguration and initial statements indicating he would not abdicate power, suggest decidedly different motives and means.

The signatories of the Agreement have committed themselves to working toward the establishment of stability and development of sustainable democratic institutions through such activities as:

- ▶ Guaranteeing civil peace and security by affirming the spirit of tolerance, compromise, and respect and by maintaining an open dialogue on the resolution of all social and political issues facing the country.
- ▶ Accelerating the process of democratization by committing to the conduct of parliamentary elections under free and fair conditions by May 1998. Toward this end, the signatories proposed to intensify the work of the Multi-Party Working Group on Electoral Reform.
- ▶ Respecting the rule of law through the establishment of limits on the exercise of power and greater transparency of state structures;
- ▶ Nationalizing all property belonging to the League of Communists and related institutions and preparing a full inventory of assets to be publicly disclosed. Issues of future title and utilization are to be the subject of parliamentary debate and decision.
- ▶ Decentralization of state authorities according to a plan developed cooperatively between Republic ministries and local communities;
- ▶ Acceleration of privatization in tandem with necessary social security measures;
- ▶ Protection of human rights and the introduction of a public dialogue on the equitable handling of minority issues.

The signatories further commit themselves to begin work toward the implementation of these goals immediately and consistently, in good faith and mutual trust, and envision the possible creation of a multi-party Government dedicated to their attainment.

G. MULTI-PARTY WORKING GROUP ON ELECTORAL REFORM

²⁰ The complete English translation of this text can be found in Annex XV of this report.

A special working group dedicated to the spirit of multi-partisanism and the need for electoral reforms has been established to forward, debate, and prepare revisions to the "Law on the Election of Councilmen and Representatives," the "Law on the Register of Electors," the "Law on Financing of Political Parties," and the "Law on Public Information." The Working Group is comprised of political parties represented in the Assembly as well as those with mandates in the Federal Parliament. Its members include representatives of the Democratic Party of Socialists (Djukanovic wing), the People's Party, the Liberal Alliance, the Democratic Action Party, the Democratic League, the Democratic Union of Albanians, and the Social Democratic Party as well as representatives of Government. The group was belatedly and reluctantly joined by representatives of the Bulatovic wing of the Democratic Party of Socialists. The chairmanship of the Working Group rotates from meeting to meeting and the work of its members is divided into two sub-groups: one responsible for legislation on elections and voter registration and the other on campaign financing and the mass media. There is no formal nor routine mechanism of liaison between the two-subgroups to ensure that legal terminology, administrative timetables, and campaign period requirements applied to various pieces of legislation are consistent.

The activities of the Working Group were intensified upon the signing of the "Agreement on the Minimum Principals for the Development of a Democratic Infrastructure" as plans were made to introduce all four pieces of revised legislation to the full Assembly during its fall session and to secure passage by year's end.²¹ In the aftermath of the Agreement, the Working Group directed its efforts toward modifications intended to: introduce proportional representation on the basis of a single electoral unit (with special provisions designed to safeguard the representation of Albanian minorities); improve mechanisms of control over the election process and determination of results; further open state-owned media and allow for equal access of all political parties; introduce greater regulation and disclosure of campaign financing; and improve the currency and accuracy of voter registries.

While the existence of such a multi-party forum brings a positive and necessary diversification of views to the election reform process, the absence of practitioners limits the quality of its proposals. During its consultations, the IFES team was surprised to learn that election officials, legal scholars, judges, and journalists had not been involved, not even as advisors to the Working Group, or as expert witnesses, nor had they been given access to copies of the revised drafts of legislation. Although the Working Group is a multi-party entity, the lack of independent counsel suggests that the process of electoral reform has become politicized, i.e. with political interests rather than technical and legal considerations driving the reform process.

²¹ In subsequent developments, most of the legislative package was approved by the Assembly by early 1998. Former President Bulatovic, refused to promulgate the laws and sent them back to the Assembly. The Parliamentary Working Group revised the draft laws and resubmitted them to the Assembly following Milo Djukanovic's inauguration as President. Thusfar, the "Law on the Election of Councilmen and Representatives," the "Law on the Register of Electors," and the "Law on Public Information" have passed in the Republican Assembly.

IV. POLITICAL PARTY SCENE

The formal split of the Democratic Party of Socialists, the signing of the "Agreement for the Minimum Principles for the Establishment of a Democratic Infrastructure" by six political parties, and the presidential electoral defeat of Momir Bulatovic has created an entirely different political climate in Montenegro. It is an environment in which Milo Djukanovic will be forced to form a multi-party government in order to survive. It is also an environment which will necessitate significant adjustments in the practices of the opposition political parties if they are to prosper. Meaningful political competition and greater input to public policy will necessitate significant initiatives in the areas of party building, social outreach, message development, and program. While the prospect of truly competitive elections provides an opportunity for each party to obtain an accurate measure of its support in society, the limited political sophistication of the electorate may necessitate the formation of a coalition leading into the campaign if the democratically oriented parties have any hope of controlling the Assembly.

A. DEMOCRATIC PARTY OF SOCIALISTS

The nature of the Democratic Party of Socialists remains extremely convoluted as the legal status of each faction has yet to be fully resolved and as the Djukanovic wing of the party is pushed by its coalition partners and the courts to separate its party structures from those of the government. As noted earlier, Momir Bulatovic lost the presidency of the national DPS structure and was ousted from the party in Summer 1997. His faction continues to use the DPS name and has been registered under that name with federal authorities in Belgrade. Milo Djukanovic's wing is registered under the name DPS with republican authorities in Podgorica. Rights to the name are particularly important as the resolution of this matter may well decide the final disposition of the party's extensive financial resources and property. At the same time, the Assembly has moved to inventory all assets of the League of Communists in Montenegro, of which the unified DPS was a successor, and consider options for future title and utilization. The courts have also begun to strip the party of its control over the Government. During the team's visit, the Constitutional Court ruled that government ministers no longer had to be approved by the party, in accordance with the party's rules, prior to their presentation to the Assembly.

While the split within the party was largely motivated by political ambitions, the evolution in the thinking of Djukanovic and his supporters is beginning to result in significant ideological differences between the two factions. Bulatovic is seen as thoroughly beholden to Milosevic's agenda, backed by conservative forces within the electorate: those favoring strong ties with Serbia and those hardest hit by economic collapse and opposed to change. Djukanovic favors increased autonomy for the Republic and considerably more progressive political and economic policies. Although western leaders have come out in favor of his regime and are optimistic about the prospects for democratization within Montenegro under his leadership, some opposition leaders are not so sure. One parliamentarian questioned the reform commitment of the revamped DPS, noting that it was "not within the nature of the party to enact democratic practices". Another noted that Djukanovic's DPS "has no strategy . . . no idea how to proceed. Once they learn how hard it will be, they may not be such eager reformers." In all fairness, the outcome of this evolutionary process with regard to public policy and democratic practice will become clear only after Djukanovic has consolidated his power. A measure of their popular support will have to wait until after new parliamentary elections are held in May 1998.

B. PEOPLE'S PARTY OF MONTENEGRO

The People's Party of Montenegro was among the first opposition parties to be formed in Montenegro. The party, chaired by Professor Novak Kilibarda, is based in Podgorica and has branches in each of the 21 municipalities. It has approximately 20,000 members.

A party of liberal democratic orientation, it initially favored sovereignty for Montenegro within a democratic federation of Serbia and Montenegro and the integration of all Serbian peoples. Primacy of foreign relations was with other Balkan states and peoples. As a result of the authoritarian orientation of the Milosevic regime, deteriorating relations with Serbia, and the developing political crisis in Montenegro, the party has moved toward even greater autonomy, if not independence, for Montenegro. Its economic plank favors private property rights including the privatization of property formerly confiscated by the Communist regime, and taxation as the basis of state revenue. With respect to religion, the party recognizes Orthodoxy as the national religion. It endorses the establishment of a professional police force and army. In recent political developments, the People's Party played a crucial role in consolidating the support of the entire opposition behind Milo Djukanovic's presidential bid.

The party, in coalition with the Liberal Alliance, holds the second largest mandate, in the Assembly with 19 seats out of 71. This coalition has recently collapsed, however, as the Liberal Alliance positions itself to compete as a political party in upcoming parliamentary elections. The People's Party has also experienced a split within its own organization, with the more extremist, ie. pro-Serbia, elements, leaving the party. It is a signatory of the "Agreement on Democratic Principles." While the party continues to be highly respected, its intellectual orientation may limit its electoral prospects and influence in the longer term.

C. LIBERAL ALLIANCE OF MONTENEGRO

The Liberal Alliance was established in 1990 in the city of Cetinje, as the first opposition political party. Although originally against the break-up of Yugoslavia (SFRY), once this happened, the party strongly opposed the war in former Yugoslavia and particularly the involvement of Montenegro in military operations against Dubrovnik, Croatia. It envisions an independent, internationally recognized and integrated Montenegro based on liberal democracy, private property, a market economy, and ethnic tolerance. It presents itself as a diverse organization committed to the Montenegrin traditions of peace, tolerance, and coexistence. The party is a full voting member of the Liberal International.

The Liberal Alliance is a signatory of the "Agreement on Democratic Principles." It recently left its parliamentary coalition with the People's Party to prepare for upcoming Parliamentary elections in which it anticipates winning as many as a quarter of the seats in the Assembly. In the aftermath of parliamentary elections, it favors the conduct of a new referendum to decide the future of the state of Montenegro. The party is chaired by Slavko Perovic and claims 22,000 members.

D. SOCIAL DEMOCRATIC PARTY

The Social Democratic Party originated within the reform coalition of former Prime Minister Ante Markovic, although the party itself was not formally founded until 1993. It is chaired by Zarko Rakcevic and has chapters in most of Montenegro's municipalities.

Initially, the core favored the preservation of Yugoslavia (SFRY) based on democratic principles, a mixed economy, peaceful resolution of conflicts, and recognition of human rights. Since the break-up of Yugoslavia, they have come out in favor of an independent Montenegro. They do not recognize the results of the referendum in which Montenegro opted to remain within a federal state of Yugoslavia with the Republic of Serbia. The party emphasizes that in every respect this federation is comprised of two unequal partners which cannot function efficiently together and whose merger can only result in conflict. It envisions a democratic Montenegro integrated into the community of nations with a mixed-economy and environmentally sound policies. It has taken a lead in attempts to improve the living conditions and educational and employment opportunities of young people with the intent of their opting to remain in Montenegro.

The party has previously had representation in both the Assembly of Montenegro and the Federal Parliament, although it currently has mandates in neither. It is a signatory of the "Agreement on Democratic Principles" and supported Milo Djukanovic's bid for the presidency, although it admits that this support is based only on its opposition to the Milosevic regime. The party is extremely outspoken about the non-competitive basis of Montenegro's party system to date and the ruling party's monopoly over and manipulation of the media, the economy, and all state structures.

E. DEMOCRATIC UNION OF ALBANIANS

The Democratic Union of Albanians was formed in 1993 following a split with the Democratic League in Montenegro. The party is based in Ulcinj and has a branch organization in Tuzi. Its estimated membership is 5,000 people. The Union has two seats in the Assembly and eight seats in the Ulcinj City Council. The party is chaired by Bajram Redza.

The party perceives itself as a protector of Albanian rights and a representative of Albanian interests in Montenegro. It operates in accordance with the Constitution and laws of Montenegro and advocates the observance of international laws and conventions on human rights. It favors cooperation with all democratically-oriented political parties on the basis of mutual respect. It is a signatory to the "Memorandum for Special Status of Albanians in Montenegro" and the "Agreement on Democratic Principles." It views Djukanovic's reforms as crucial for greater Albanian rights and deems any cooperation with Bulatovic and his supporters as unacceptable. The party favors greater local autonomy for the authorities in Ulcinj and Tuzi, more rights within the sphere of education and regarding the use of the Albanian language and Albanian national symbols, and advocates the creation of a separate electoral unit for Albanians.

F. THE DEMOCRATIC LEAGUE OF ALBANIANS IN MONTENEGRO

The Democratic League of Albanians in Montenegro was originally the sole political voice for Albanians and was established as a political party in 1990. The party has some 5,000 members and has two seats in the Assembly and control of the city council in Ulcinj. The party is headquartered in Ulcinj and has branches in Albanian communities throughout Montenegro. It is chaired by Professor Mehmet Bardhi.

The party favors the advancement of the Albanian cause and protection of their rights and culture

through democratic and legal means. They are signatories of the "Memorandum for the Special Status of Albanians in Montenegro" and the "Agreement on Democratic Principles." The League opposes the status of Albanians under the Montenegrin Constitution, which refers to ethnic groups, favoring instead the term "national minority." It is dissatisfied with the absence of Albanian history and heritage within the educational system, the lack of Albanian language mass media, and the under-representation of Albanians in state institutions. The League opposes the creation of a special electoral unit for Albanians as not all Albanians live within the proposed constituency and would lack representation in the Assembly. They favor the creation of a single electoral unit with a waiver of the threshold requirement for Albanian parties and the automatic allocation of four seats to representatives of the Albanian constituency.

V. THE MEDIA ENVIRONMENT

While "democratization" of the mass media has been underway in Montenegro since 1992, the split of the ruling Democratic Party of Socialists has served as a catalyst for more meaningful and substantive changes and has greatly intensified the momentum of the reform process. Significant shifts are underway, both in terms of the openness, diversity, and competitiveness of media outlets and the tastes and loyalties of the media market. According to the Ministry of Information, there are currently 170 registered media in Montenegro, "most of them private" and three news agencies. At the time of the team's visit, political parties and members of the journalistic community expressed great relief and optimism at the altered political circumstances, ie. the split of the ruling party and the presidential election victory of Milo Djukanovic, and its ramifications for the mass media. This was a nearly universal impression despite the growing political crises within the country.

Political parties and special interest groups in Montenegro contend that prior to the split, despite the guarantees which existed on paper -- in the form of the comprehensive Law on Public Information²² - the mass media was, in fact, monopolized and manipulated by President Bulatovic and the then-united ruling party. Members of the journalistic community confirm that state-owned outlets have, for the past four years, failed to print or air stories on the views and activities of opposition political parties or even independent opinion leaders. According to one prominent journalist, "We have a very democratic public information law. Practice, well, that is another thing altogether." A colleague commented: "Under Bulatovic we had no access, no information." Although independent outlets existed, they were often dependent upon state-owned means of production ranging from printing houses to transmitters and thus vulnerable to the State.

Market research conducted between June and October suggests that the altered political landscape and subsequent developments within the mass media are beginning to impact media consumption, particularly among young people, ie. those under the age of thirty.²³ As of October, 37% of young people indicated that their peers served as their most trustworthy source of information, while 18% trusted radio, 14% trusted television, and 8% trusted newspapers. When asked which source they trusted least, 55% responded television, 24% newspapers, and 12% radio. It should be noted that most news and information programming is aired on state television Radio/Television Montenegro (RCG/RTV). Elmag Television airs only entertainment programming and Blue Moon only limited news and information. While the consumption of mass media programming is surprisingly low, the direction of these numbers is particularly revealing. Before the split of the ruling party, 66% of young people indicated they didn't even watch television. By October, this was down to 55%. In June only 6% of those who watched tuned in to RTV. Four months later, 18% were watching RTV. While only 6% listened to RCG prior to the split, 10% were tuning in by October. Similarly, readership of the state newspaper Pobjeda increased from 5% to 8% in the same period. Readership of newspapers produced in Serbia, among them Nasa Borba, Politika, Novosti, Blic, and Dnevni Telegraph, declined noticeably during the same period.

²² According to the Secretariat of Law, the laws of 37 developed democracies were reviewed during the drafting of Montenegro's Law on Public Information.

²³ All data has been generously provided by the Faculty for Economic Sciences in Podgorica.

A. THE LAW ON PUBLIC INFORMATION

The Law on Public Information was first passed by the Assembly of Montenegro in 1993 and modified in 1996. It was under review by the Multi-Party Working Group on Electoral Reform during the assessment mission.²⁴ As noted above, the law is significantly more comprehensive than its counterparts governing campaigns and elections which, by and large, are in accordance with internationally recognized democratic standards. The basic provisions of the Law guarantee the right to factual, objective, and current public information, forbid censorship, provide for equal rights of all individuals and legal entities to information, and disallow the use of force as a means of influencing sources of public information or dictating the content of their publications, transmissions, or productions. Public information outlets are further expected to respect the privacy and dignity of a citizen. The decisions and actions of government, the legislature, and state administrative bodies are to be transparent, with information at their disposal equally accessible to all journalists.

Chapter Two of the Law deals with the management of public information sources and requires that the management of all state-owned media be constituted by a Management Board,²⁵ a Supervisory Board, and a Director. Article 26 stipulates that the Management Board is to consist of 15 members, appointed by the Assembly, in proportion to the number of representatives each political party has within the legislature. The director of a state-owned public information medium is elected by the management board. One of the few, albeit, significant proposals for the modification of the Law on Public Information forwarded by the Multi-Party Working Group on Electoral Reform is the addition of a program policy board to the management structure of state-owned public information sources. As with the Management Board, the Program Policy Board is appointed from the Assembly in proportion to the representation of each political party therein.

The responsibilities of the Management Board are not defined by the existing Law and are to be clarified by specific acts on the activities of public enterprises, the Deed of Foundation, and the medium's regulations in draft language for proposed modifications to the Law. The Supervisory Board, which also includes representatives directly appointed by the Government, is responsible for issues of financial management according to draft modifications. According to comments within the revised draft of the Law, the Government is able to *directly control the work of directors* of state media through the supervisory boards. The Program Policy Board is to be tasked with the formulation of the program policies of a public information medium and monitoring its compliance, while at the same time making sure that there is freedom of information and respect for the rights of citizens and journalists.

The law specifically disallows programming aimed at the violent destruction of the constitutional order, breaking the territorial integrity of the Republic, breaching guarantees of human rights and civil liberties of the populations, or inciting national, racial, or religious intolerance or hatred. According to the Secretariat of Information, the only two conditions that would cause the registration of a public

²⁴ The Law on Public Information was subsequently passed on 12 February 1998 by the Republican Assembly.

²⁵ The Management Board is renamed the Board of Directors in proposed revisions to the Public Information Law.

information entity to be revoked are advocating the violent overthrow of the government or inciting hatred. At the same time, a public information entity will be removed from the register of public information media if it fails to initiate publication or broadcasting within 6 months of its registration, it is inactive for a period exceeding 6 months, or its activities are disrupted at least three times (reduced to two in draft modification to the law) as a result of a judicial ruling.

Chapter Three of the Law is devoted specifically to the rights and responsibilities of journalists. According to its provisions: journalists enjoy the right to express their opinions toward all events and developments within the Republic; a member of the journalistic community may neither be suspended, nor his/her status changed, nor his/her salary reduced as a result of his/her opinion; and a representative of the mass media may refuse to participate in any activity which is inconsistent with the regulations and practices of the journalist profession. In addition, it is unlawful to publish or air opinions under someone else's name. The printing or broadcasting of information subsequently found to contain inaccuracies must be handled through a correction.

In order to protect the freedoms of public information and the right of citizens to be given factual, objective, and current information, the Council for the Protection of Public Information Freedoms is created under Article 80. The Council consists of a president and 11 members. The president and seven members of the Council are to be appointed by the Assembly in proportion to the representation of political parties therein. The remaining four members are to be appointed, one each, by the President of the Republic, the President of the Government, the University of Montenegro, and the Academy of Arts and Sciences of Montenegro. Members are appointed for a period of 4 years. The Council is tasked to address:

1. Complaints raised by citizens and legal entities against the programming or actions of public information media;
2. Complaints of journalists and publishers whose rights to information from state organs have been violated;
3. Complaints of journalists regarding the disclosure of information to state organs;
4. Complaints of journalists and editors, as well as their professional associations, against the founders or publishers of public information entities who have curbed the freedoms of thought and expression.

The Council subsequently advises the Assembly, authorized organs of state power, and local government organs on its position regarding each complaint. Action taken in response to complaints and in accordance with the Council's recommendations is the responsibility of the Government and its authorized administrative bodies.

As noted in the introduction to this chapter, the problem with the Law on Public Information, with a few exceptions, is not so much its content, but dismally inadequate compliance and enforcement prior to the split within the ruling Democratic Party of Socialists. The quality and consistency of its application will become clear only in the future.

B. STATE MEDIA OUTLETS

The situation within state-owned media is a difficult one. The past policies and practices of the public media have been widely and rightly condemned by opposition political parties, special interest

groups, and the academic community, to name but a few. At the same time, editors in state-owned media have found themselves in an unenviable position. Most of them report being under extreme political pressure during the Bulatovic regime. Despite provisions in the Public Information Law to prevent such an eventuality, editors report that there is no security in their profession and they "are constantly being replaced." Interestingly, the intent of the various "control" boards, ie. management boards in particular and now program policy boards, as envisioned by the "Law on Public Information" was to ensure the objectivity of state media outlets and the protection of the rights of citizens and journalists to be informed. In a one-party state, they have had the opposite effect: politicizing programming and editorial content and restricting the rights of citizens and journalists with respect to the factual, objective, and timely provision of information. In a society where elite circles continue to be highly distrustful of editors and journalists of public information organs, the root of many of the problems appears to have been the control boards.

In response to abuse of state-owned media outlets and the split within the ruling party, members of the Multi-Party Working Group on Electoral Reform have sought not only to increase the number of control boards but also their grasp over the public media. While well intentioned, the Working Group assumes that the break of the ruling party's monopoly on power will be the end to politicization and manipulation of public media outlets and at the same time fails to acknowledge that the domination of a single party or coalition -- which is not out of the question -- could have the same affect. On the other hand, a high degree of diversity or factionalism on the control boards has certain adverse consequences for their efficiency if not operability which have been equally unrecognized.

Journalists and editors in public media contend that political parties' appointees to control boards are more interested in narrow political interests than democratic principles. According to one editor, the boards are comprised of "low level party hacks." Their professional qualifications for the job have been brought into question. Out of 15 members of Pobjeda's Management Board, only one has a journalistic background. None of the member's of RTV's Management Board have come from the ranks of the journalistic profession. This lack of experience has been exacerbated by the fact that editors so far have, not had the right to make proposals to influence the debates of the decisions of the control boards, let alone oppose them.²⁶ According to the bulk of newspaper, radio, and television editors, they were not even permitted to attend the sessions of the management boards, which have also been closed to the public. When one editor-in-chief suggested that a session of his control board be televised since it was in the public interest, the members reportedly "blanched." The lack of transparency of the control boards is of particular concern and is wholly inconsistent with their democratically oriented mandate.

With respect to the efficiency and operability of the control boards within an increasingly political environment, representatives of the Ministry of Information confirm that the boards are becoming so big and diverse that they are having difficulty reaching a consensus and implementing it. It is widely believed that they have become unworkable. In the aftermath of the presidential elections, the management boards have not been functioning. Editors consistently reported that this has been their most productive time. Interestingly enough, this coincides with the period in which the public media's critics, most notably opposition politicians, have been most satisfied with its performance.

²⁶ As with practitioners from the independent media, none were invited to advise or participate in the Multi-Party Working Group on Electoral Reform which is charged with revising the Law on Public Information.

The editors contend that they eagerly await partial privatization in the near future, with a 51% stake of ownership retained by the Government.

C. INDEPENDENT MEDIA OUTLETS

The situation within so-called independent media is equally complicated. As in many post-communist societies, the independent media is not always so independent as it is a conduit for alternative viewpoints. In this respect Montenegro is not alone. The virtual absence of any dissenting opinions within the journalistic community concerning the anticipated policies of president-elect Djukanovic suggests that unwavering support of the new regime is considered crucial to the consolidation of a free press in the longer term even if immediate practices of the chief executive with respect to the mass media are not always so democratic. Of course, the latter part of this equation remains to be seen. Nevertheless, independent journalists and editors are clearly enthusiastic about the new era in the mass media despite their own financial hardships in what has been called a "dead" economy.

It is clear that there exists a graduated degree of autonomy within the so-called independent media. Discussions with a host of "independent" media outlets reveal that some have negotiated Aspecial@ arrangements with government representatives and according to some, as a result, have been given more favorable monthly rates for frequencies.²⁷ Monthly rates for a frequency can run as high as \$2000 a month for outlets without any formal arrangements with -- or expectations of -- the Government. Rumored connections of recently established media outlets with the administration of Djukanovic suggest that the practice of "special" rather than equitable conditions continues, perpetuating the perception of the non-independent nature of a portion of privately owned media.

Other challenges, reminders of Montenegro's communist past also affect the development and consolidation of a free press. Most notably, self-censorship remains a practice of many journalists. According to one editor, "there has not been any security in our profession." Another suggests that journalists have been trained in the socialist tradition and that "it will take years until Montenegro's media become truly independent." For representatives of some long-standing independent media the message sent by politically motivated firings; difficulties in and disruption of printing, distribution, and transmitting; and threats and actual incidences of violence over the years remains clear. Restricted behavior is not limited to the journalistic community. Editors also indicate that there is still some fear within the business community with respect to the purchase of advertising time or space within independent media outlets. The prospect of Government recriminations for financial support of the independent media has not yet dissipated.

As with their counterparts in the public media, independent journalists and editors report that they have not been invited to advise nor participate in the Multi-Party Working Group on Electoral Reform

²⁷ It is also interesting to note that special conditions have reportedly been applied to the Belgrade-based media group BK, which has been buying up frequencies in Montenegro but not using them. Some have alleged that they have surpassed the six-month inactivity clause of the Law on Public Information, although their registration has yet to be revoked.

which is considering modifications to the "Law on Public Information," nor have they seen copies of the revised draft. When asked about this, one journalist responded: "We have not been consulted . . . No one I know has been consulted."

D. THE MASS MEDIA AND ELECTION CAMPAIGNS

The performance of the mass media with regard to the treatment of political parties and reportage of election campaigns has been widely criticized and has been, in large part, the catalyst to current and intensive efforts to reform the "Law on Public Information." In particular, biased coverage of political campaigns during the election period and unequal access provided to political parties generally and the prejudicial ramifications of such practices were among the main concerns. The OSCE delegation also noted that broadcasts into Montenegro by Serbian-based media outlets are not subject to provisions of Montenegro's electoral and public information laws.

Campaign and media provisions of the electoral law cover:

1. The right of candidates to have access to public information media and equal time on Radio/Television Montenegro for presentation of candidates/nominating groups and their electoral programs;
2. Prohibitions on political messages during commercial or entertainment programs. Such messages are to be limited to informational and news programs;
3. The provision of equal space and conditions in the state-owned newspaper Pobjeda;
4. Equal treatment regarding the announcement of the scheduled rallies of political parties on Radio/Television Montenegro;
5. Requirement that paid political advertising be identified as such;
6. The forging of an agreement between media representatives, the Republican Election Commission, and candidates/nominating groups governing the presentation of political information and special election programming in an independent and objective manner by impartial presenters;
7. The development of rules governing all media funded by the state or local administrations;
8. The organization of conferences and public events in conformity with regulations on public order and peace as well as reportage of such events;
9. The preparation and display of campaign materials without special permission in places designated by municipal authorities;
10. Public disclosure of decisions on claims brought against the media during the election campaign;
11. Prohibitions on broadcasting/publication of the results of public opinion polls and projections of results within a week of elections through closing of the polls;

The "Law on Public Information" also requires that state media outlets publish, at the request of competent government institutions, information deemed urgent or of special importance of the citizenry (this would include information on the electoral process). It also requires them to inform the population on the activities and positions of all political parties represented in the Assembly.

VI. NGO DEVELOPMENT

A. NGO ENVIRONMENT

While non-governmental organizations (NGOs) do exist in a nominal sense, in actuality they have yet to take root in Montenegrin society. By and large this can be attributed to a lack of understanding about the nature and role of such organizations by the Government, prospective NGOs, and the population. The idea of civic initiative is a novel one, especially in rural areas where the population tends to be resistant to change. To date, prospective NGOs are not yet in a position to advocate a favorable environment for the evolution of the non-governmental sector; act as intermediaries between government and those they represent by consolidating and representing public interests and playing a public advocacy role; promote coordination and cooperation among similar groups; or build institutional sustainability through support services, such as advising, training, resource centers, newsletters, etc.

This situation is exacerbated by extremely limited options for financing. Cultural and special interest organizations, which tend to be extremely loosely organized and administered; student organizations; and a couple of human rights organizations, whose interests at times tend to be extremely broad and, on occasion academic, comprise the current NGO sphere. Many receive the sum or a bulk of their operating funds from the Government. Ethnic based groups enjoy some support from émigré communities. Private foundations have begun awarding grants to a handful of student and human rights organizations.

At the same time, the increasingly open and competitive political environment in Montenegro; improved prospects for transparency in government and decentralization of decision-making, or at least greater opportunities for input; and the reported ease with which NGOs can register; are promising signs for the development of a substantive NGO sector in Montenegro. Through on-going civic education activities and the consolidation of the NGO sector, the citizenry of Montenegro can be empowered to actively and effectively engage and monitor public institutions.

B. ELECTION RELATED NGOS

There currently exist within Montenegro, two organizations with a mandate to conduct election-related and other activities. These include the Helsinki Committee of Montenegro and the Center for Democracy and Human Rights. The Helsinki Committee, founded in 1994, is described by its leadership as a group of individuals committed to the observance of human rights and promotion of democratic ideals. Among its interests and activities are: judicial reform, minority rights, free and fair elections, establishment of society based on the rule of law, openness of the mass media; reform of the military; creation of democratic political institutions, and protection of private property rights (as well as the public disclosure and equitable conditions for the privatization of property formerly belonging to the Communist Party.

The Helsinki Committee did field domestic monitors for the 1997 presidential elections and 1996 parliamentary elections, although the absence of language in the election law on the rights and responsibilities of observers did present problems in obtaining accreditation from the Republican Election Commission. During the recent presidential election campaign, it was forced to resort to quoting

provisions of the Copenhagen Document. Pressure by international observer missions resulted in their receiving at least some credentials, but only for three of their 10 representatives, and only two days before the election. Among the group's concerns with the election process were significant omissions and inadequacies in the voter registry, monopoly and manipulation of mass media outlets by the incumbent president, and political pressures and intimidation perpetuated by Federal authorities.

The Center for Democracy and Human Rights was established in July 1997 and currently has 10 members and two employees. Its activities also include monitoring of human rights and the creation and consolidation of democratic institutions in Montenegro. It focuses on electoral issues, ethnic relations, minority rights, refugee status, citizenship issues, the mass media, and political reform. The Center works closely with the Center for Human Rights in Belgrade and wants to establish working relations with international organizations. When asked to distinguish its activities from the Helsinki Commission, the Center's leaders noted that their orientation was more academic and analytical, while its counterpart was involved in practical questions.

The Center plans to hold a conference in early 1998 to analyze the recent presidential election process and discuss election law and practice, public information and the mass media, and the ramification of elections in Serbia and Montenegro. Its leaders were not aware of the timetable for the passage of amendments to a host of laws governing campaigns, elections, and public information which was slated for December 1997 or January 1998. Like other groups, it also was not invited to advise or participate in the Multi-Party Working Group on Electoral Reform, nor has it seen copies of draft modifications to the laws. When asked about the problems stemming from the absence of language within the election law concerning election observers, its leaders indicated that they didn't expect any obstacles to domestic monitoring but agrees that, perhaps, legal protections "could be useful." The Center also has plans to conduct eight public opinion polls between April and September 1998 (although legal prohibitions on the publication of polling results a week out from elections may affect their schedule) and issue a series of studies on a variety of human rights and election related issues.

C. ELECTION ACTIVITIES OF STUDENT GROUPS

A number of student organizations, working in cooperation, also played an important role in recent presidential elections. Of the nearly 130,000 young people in Montenegro, an estimated 80,000 have voting rights. Many of these, as first time voters, have been directly affected by the inadequacies of Montenegro's voter registry. Thousands of young people were disenfranchised during the first round of presidential elections as their names did not appear on voters lists.

The Student Union and the Council of Youth tried to identify eligible young voters to ensure that their names were included on the lists. An appeal was sent to the Republican Election Commission and published in the mass media. As a result of their efforts, a reported 15,000 young people were added to the electoral rolls by the second round of the presidential elections. The two groups also requested that young people be allowed to vote at their places of study or military service (a significant number of young people attend university in Belgrade, Serbia). While this request was refused (there are not legal provisions for this), the groups arranged for students to be bused to their home constituencies.

Voter information and mobilization activities for young people were also conducted through the

mass media and special events. The group estimates that as many as 80,000 people were reached by their message that: *You are important and your vote counts!* Student leaders note that while there was formerly little interest in politics, the split of the ruling Democratic Party of Socialists has created conditions and opportunities which have sparked participation among young people.

At the same time, it appears that the group may not understand the *process-oriented nature* of elections nor its on-going role in informing its constituency and protecting their rights. When asked if they would perform similar activities for the parliamentary elections, student leaders noted that while they plan to conduct some voter education, the results of their registration drive are *permanent*, so the future need is not particularly great. This, of course, fails to acknowledge the continued need to monitor the compliance of local authorities to update voter registries and pressure them to do so as well as ensure that young people, who have recently obtained the right to vote or may be particularly mobile are included on the lists. It also indicates that the group is not fully aware of its significance as perhaps the most organized, pro-active, and focussed registration effort of the presidential election cycle. Moreover, recent surveys suggest that young people in Montenegro consider their peers to be the most important source of information on political, social, and economic groups. They also indicate that 38% of young people under the age of 30 do not consider themselves "*informed*" while 42% admit they could be "*better informed*." These results indicate a very strong need for civic education directed at young people.

In addition to the Student Union and the Council of Youth, another group engaged in election related activities, the Center for Reforms, which serves as a professional network and support group of young entrepreneurs,. According to the Center's President, "young people do not know enough about the electoral process and this limits somehow their influence in politics." In response to this situation, the Center used its ten member organizations throughout Montenegro, spanning six cities, to provide information during the presidential election campaign.. In particular, they tried to target apathetic voters and those planning to boycott the elections, counseling them about the importance of every vote. They also conducted door-to-door "get out the vote" campaigns (GOTV). The Center's leadership notes that while there were problems with the presidential elections, they were relatively free and fair but that *the political crisis which emerged in the aftermath of the elections has been exacerbated by people's lack of knowledge about the law.*

In anticipation of the upcoming parliamentary elections, the Center is holding meetings with regional election commissions and political party chapters in the hope of conducting multi-tiered training for political party representatives appointed to election commissions and polling sites as well as voter education activities through the mass media and special events. Funds to undertake youth-oriented activities by the Center for Reforms, the Council for Youth, and the Student Union were raised from a variety of sources including each organization's national and regional budgets (ultimately public funds), private contributions, the Open Society Institute, and the Jewish Distribution Corporation.

VII. THE CITIZENRY

Montenegro has a population of over 630,000 people, of whom 62% are Montenegrin, 9% are Serb, 16% are Muslim, and 7% are Albanian. The number of refugees currently in Montenegro is estimated to constitute 10% of the population. It is anticipated that as many as 30,000 of these refugees will opt to remain in Montenegro. The Montenegrin Constitution expressly provides for equal rights of national and ethnic minorities and a tangible effort has been made to integrate citizens of Muslim and Albanian heritage into political, economic, and cultural spheres. While Serbo-Croatian is the country's official language, in communities with a high concentration of Albanians Albanian is clearly the language of choice and is utilized to the greatest extent possible. In the past forty years, the country has undergone a process of urbanization. Currently, 58% of the population live in towns or urban areas, while some 7% live and work in rural areas. According to statistics provided by the Ministry of Education, approximately 202,000 citizens over the age of 15 have attended secondary school or higher. Some 251,000 citizens over the age of 15 have no more than a primary school education, although 30,000 of those are deemed to be functionally illiterate. Primary education is mandatory. Of those,. Recent studies by the Economic Faculty indicate that when it comes to current events and developments within Montenegro, only 15% of young people under the age of 30 consider themselves to be "*informed*."

With respect to elections, 470,738 citizens qualified for suffrage according to the Register of Voters utilized for the second round of voting in the recent presidential elections of whom 343,221 participated. Of those, 50.8% cast their votes in favor of opposition candidate Milo Djukanovic, while 49.2% supported incumbent President Momir Bulatovic. Although 73% of voters participated in elections, levels of awareness, particularly with regard to their rights and the electoral process were relatively low. In particular, the apathy of voters with regard to checking their entries in the Register of Electors and providing the required notice of a change in address contributed to the disenfranchisement of thousands of voters in the first round of presidential elections. The lack of a clear mandate in support of Milo Djukanovic, given that nearly half of the electorate voted in favor of a continuation of the policies of the past, has served to undermine political stability within the Republic. The two leaders and their active supporters have become increasingly polarized, and the incumbent -- with the backing of federal authorities -- originally refused to peacefully turn over power to his successor. Bulatovic actually called upon his supporters to arm themselves against the incoming "criminal" regime and indicated that he would only turn power "back to the people." After a series of mass demonstrations were held by Bulatovic supporters surrounding Djukanovic's inauguration, Bulatovic did finally concede power.

VIII. RECOMMENDATIONS

The current chapter provides some preliminary recommendations for legal, policy-oriented, and procedural changes which address the concerns raised and weaknesses observed during the team's mission to Montenegro and are based on the draft legislation received by the team.²⁸ More detailed analyses of the election law and the proposal for computerization and centralization of the voter registry can be found in Annexes XVI and XVII of this report.

A. LEGAL REFORM

- ▶ Considerably more clarity and detail is required throughout legislation governing campaigns and elections to ensure the correct and consistent interpretation of law, efficient and uniform administration of elections, and equitable adjudication of grievances.
- ▶ Every effort should be made to include practitioners, among them legal scholars, election officials, and journalists, to be involved in the process of reforming legislation on elections, voter registries, campaign financing, and public information, either in an advisory capacity or formal participation in the Multi-Party Working Group on Electoral Reforms.
- ▶ Some form of routine liaison between the two sub-divisions of the Multi-Party Working Group should be instituted for the purposes of comparative review of all proposed legislation to ensure consistent and/or compatible legal terminology, realistic administrative timetables, and enforceent of campaign requirements.
- ▶ In light of political pressures to conduct elections in May 1998, the Multi-Party Working Group should focus its efforts on a manageable number of priority issues, especially those which proved most problematic during the presidential election cycle such as: Certification of candidate slates and ballot access, equal access to and equitable coverage by state media outlets; accuracy and currency of voter registries, adjudication of grievances, and the integrity of the election process, including particularly election results. Issues pertaining to the representation of the Albanian minority in the legislature and, subsequently questions of constituency delimitation or threshold requirements for mandates will also need to be addressed.
- ▶ In the aftermath of the election campaign, the Multi-Party Working Group should commit itself to an exhaustive review of the presidential, parliamentary, and municipal election experience to further refine legislation governing campaigns and elections, and continue promotion of institutional, regulatory, and procedural reforms, as well as actively encourage and support voter and civic education initiatives.

B. ELECTION MANAGEMENT AND ADMINISTRATION

²⁸ Subsequent revisions to the draft laws are not addressed as they were not available at the time of writing.

- ▶ Institutional reform is required to rectify the current diffusion of election administrative responsibilities which has led to confusion among voters and political participants, disagreements between state structures, and an ineffective administrative system. All responsibilities for the preparation and conduct of elections at the national level should be consolidated under the Republican Election Commission. A distinction between electoral administration and executive/logistical operations is required.
- ▶ Much more realistic timetables must be established within the law for campaign, election, and adjudication-related deadlines.
- ▶ The law should clarify the relative duties of core and expanded members of election commissions and polling site boards, particularly on election day.
- ▶ Provisions of the law dealing with the independence and impartiality of election structures need to be elaborated. Toward this end, multi-party representation should be extended to the core membership of election commissions, leadership of commissions should be determined on the basis of secret ballot among the membership; and criteria for the removal of commission members should be built into the law.
- ▶ Serious consideration should be given to utilizing the *permanent* Republican Election Commission more effectively by involving it in the electoral reform process, the development and provision of on-going election official training and professional development program, and the design of official, non-partisan voter information initiatives. The role of the REC in maintaining a centralized voter registry, if introduced, should also be taken into account. Necessary financial and human resources must be allocated to the REC so that it may perform its duties adequately.

C. VOTER REGISTRIES

- ▶ The establishment of a central Register of Electors, a methodical and reliable means of updating and correcting voter registries at the municipal level and on a routine basis, and a mechanism for review by political parties is strongly recommended.

D. SYSTEM OF REPRESENTATION

- ▶ Consideration should be given to additional options for the adoption of a modified system of representation which would respond to the right of representation of the Albanian minority within Montenegro. While the creation of a special constituency for the Albanian minority and waiver of any threshold requirements would increase their chances of representation, it may also dilute the vote of the general electorate, thereby violating the "one man one vote" principle that is implied by Article 32 of the Constitution which stipulates that *voting right is equal*. One possible alternative may be to create

a single national constituency with a lower threshold for legislative

mandates.²⁹

E. CANDIDATE NOMINATION AND CERTIFICATION

- ▶ The question of whether political parties registered solely at the federal level have the right to nominate candidates for republican, municipal, and local offices in Montenegro as well as the Federal Parliament of Yugoslavia, or only in the latter, needs to be resolved.
- ▶ To facilitate the development of a viable multi-party system, consideration should be given to built-in advantages for nomination through political parties rather than more transient citizens' groups. Rather than having established political parties expend resources each election cycle, those with mandates in the Assembly might be exempted from the signature requirement. To guard against further empowerment of the successor parties of the Communist League to the detriment of smaller ones, an adjusted threshold requirement could be applied, eg. Parties surpassing a 3% threshold (when a 4% threshold is required for representation) in the previous election could receive a waiver of the signature requirement.
- ▶ If signature requirements are retained for all or at least for a portion of the nominating entities, the law should clearly define the procedures by which signature petitions will be evaluated and dictate the specific grounds on which a petition may be rejected. Without specific legal guidelines, administrative steps in the review of petitions will remain potentially subjective. Some thought should be given to establishing a double threshold requirement. For instance, it could be determined that the signature petition must contain valid signatures equivalent to, say, at least 1% of the total number of voters in the constituency and errors or invalid signatures in excess of a legally established threshold will cause the petition to be declared null and void.
- ▶ The law should include prohibitions on places where signatures in support of candidate slates can be collected, such as places of employment or offices where salaries or benefits are distributed, to protect against undue influence or outright coercion of voters.
- ▶ Clarification in the law is required with respect to the timetable for the start of nominations, close of nominations, publication of the provisional electoral list, the period for hearing claims against rejection of or in objection to acceptance of candidate slates, and publication of the final electoral list.

F. CAMPAIGNS, FINANCING, AND THE MASS MEDIA

- ▶ The dearth of a campaign finance regulatory system should be enhanced by a system designed not to discourage political activity but to encourage compliance and public disclosure.

²⁹ Additional options for representational models which accommodate minority groups can be found in the legal analysis of the proposed Montenegrin draft laws.

Limitations should be established on the use of public office and resources for overtly political purposes.

- ▶ Inequitable treatment of candidates and political parties with respect to state-subsidized media time/space, conditions for paid advertising, and news coverage should be addressed.

G. VOTER INFORMATION

- ▶ More extensive provision of non-partisan voter information and education is required to educate voters about: the civic responsibility to register as voters, means of checking the voter registry, and information on measures to improve the accuracy and currency of voter registries, such as the application of modern technologies; voter rights and obligations under the law; opportunities for oversight of the election process; and modifications to election law and practice as well as polling day procedures which will directly affect voters. Confidence building measures may also be in order.

H. POLLING SITE PROCEDURE

- ▶ The size of polling sites needs to be reduced from the possible legal allowance of 2,500 voters per site, in order to allow polling site boards to efficiently process voters, assure the security of the ballot box, and transparency of the board's work within the prescribed voting hours.
- ▶ Serious consideration should be given to shifting the process of ballot verification (validation) from the municipal election commissions to polling site boards. The validation of ballots is intended to be a security measure by which to recognize officially issued ballots from others put into the ballot box fraudulently. This is effective only if those ballots issued are validated. The law should make it clear that all verifying stamps and/or signatures should be affixed on election day and only upon issuance to the voter. If done in advance or if unissued ballots are also validated, the intended security factor is nullified.
- ▶ All mechanisms for voting outside the polling site premises should be clearly defined and distinguished. The procedure for voting outside the polling station and criteria under which voters can utilize this option should be clarified in the law.
- ▶ Language throughout the law, such as appears in Article 68, which provides for the nullification of voting based on technical violations, should be removed. It is possible that minor technicalities may be breached as a result of mistakes rather than malfeasance. Moreover, the ease with which polling stations can be dissolved and voting nullified is open to purposeful manipulation by political participants. The invalidation of election results should be based only upon fraudulent acts which can be proven in a court of law to have affected the outcome of elections. Technical violations should be dealt with through a graduated penalty system.
- ▶ The practice introduced in recent presidential elections requiring voters to sign the voter registry

upon receipt of their ballot should be built into the law.

- ▶ Currently, no language exists within the law for dealing with spoiled ballots. Language should be incorporated which would allow polling site boards to issue a new ballot if a voter incorrectly marks his/her ballot at the polling site, provided a proper audit trail is kept and the spoiled ballot is immediately invalidated.
- ▶ Among the criteria for determining a ballot invalid, the following should be included: ballots of non-standard form, ie. those which are not of the official format and stock approved by the REC and which have not been validated by the responsible election commission, and ballots which have been marked in pencil.

I. BALLOT SECURITY AND CONTROL OF THE ELECTION PROCESS

- ▶ Language must be built into the law which provides for the rights and stipulates the responsibilities of both international and domestic observers.
- ▶ Improved ballot security measures need to be introduced with respect to the printing, transport, distribution, storage, and validation of ballots and during voting outside of the polling premises.
- ▶ The law should be amended to require two members of polling site boards, each representing different nominating entities, to administer balloting outside the polling premises. Interested observers should be permitted to accompany the team.
- ▶ An additional copy of the minutes of the results at the polling site should be completed and certified by members of the polling board and posted outside the polling site facilitating review and summarization of results by voters and election observers. The provision of sufficient copies for distribution to the entire expanded membership of polling site boards, not just their core members, would also enhance transparency. The law should expressly provide for similar practices with respect to aggregated results at the municipal level.

J. TABULATION AND REPORTING OF RESULTS

- ▶ The aggregation and finalization of election results, as with the rest of the election process, must be carried out in the most transparent manner, including the reporting of results as soon as they are available. Any delay in the announcement of results will lead to the *perception* of fraud and undermine public confidence in the integrity of the election process and validity of election results. Political parties, the mass media, and voters must be kept fully informed at this most crucial stage of the electoral process.

IX. PROGRAMMING OPPORTUNITIES

Among the opportunities for programming, identified by the IFES team for the immediate term are:

A. ADVISING ON THE IMPLEMENTATION OF LEGISLATION

IFES is in a position to assist in the implementation of legislation governing elections, voter registration, and campaign financing through the provision of comparative analysis and on-site advising and coordination. An IFES legal specialist has already undertaken a review of draft legislation on legislative elections, voter registration and financing of political parties which could be used toward this end. IFES legal experts were invited by the Multi-Party Working Group on Electoral Reform, which places a high priority on the American perspective, to play a role in the legal reform process. In keeping with IFES' approach, its legal experts would provide options and models to help policy makers and election administrators better anticipate the practical ramifications of their choices by actively employing the institutional, regulatory, procedural, and educational mechanisms to deal with them.

B. ASSISTANCE IN UPDATING AND MAINTAINING VOTER REGISTRIES

IFES has also received a request from the Government of Montenegro, through the Ministry of Foreign Affairs and the Secretariat for Development, to assist in the introduction of a centralized and computerized voter registry. IFES is prepared to assist republican and municipal authorities and system administrators through the provision of necessary infrastructure and technical experts to identify more cost-effective means of computerizing their voter registries, devise a realistic and incremental timetable for implementation of the project, provide training and oversight, and advise on the optimal management structure. IFES has provided USAID with a technical analysis of the proposed plan, as developed by the Secretariat of Development, to computerize and centralize voter registries, elaborating on the most efficient means of designing and executing the process.³⁰ An IFES technical advisor can work in cooperation with the legal advisor to help legislators modify the Law on the Registry of Electors to accommodate a centralized and computerized registry. This should also be done in tandem with voter education efforts designed to inform the electorate about efforts to improve the accuracy and currency of the voters' lists, particularly the positive application of modern technologies, and means of checking the new registry.

C. NON-PARTISAN VOTER EDUCATION AND INFORMATION

The IFES team was also inundated with requests to assist in the development and delivery of a non-partisan voter education and information campaign leading into elections. Past election experience and the results of recent surveys suggest that the need is particularly acute and becoming greater as the Assembly prepares to modify legislation affecting everything from elections and constituency delimitation to voter registration and public information. IFES advisors can work with mass media outlets and election authorities to design a campaign which addresses: voter's rights and obligations under the law, means of checking the Registry of Electors, changes in election planning and administration which affect voters,

³⁰ See Annex XVII

and innovations aimed at improving the transparency and integrity of elections (public confidence building measures), including opportunities for oversight. Special messages can also be designed for target groups, including youth, women, and national minorities. Illiteracy, language differences, and varying reach and consumption of media outlets will necessitate diversified means of communication.

D. NON-PARTISAN CANDIDATE INFORMATION AND SUPPORT SERVICES

Based on its observations, IFES team would also suggest the development and provision of special informational materials for participating political parties and their candidates. Fundamental changes to a host of laws governing campaigns and elections, a relatively low awareness level among political parties of their rights and obligations under the law, and consequent problems with compliance suggest that the Republic Election Commission will need to pro-actively provide user-friendly guidance and reference materials by the time political parties declare their intent to nominate a slate of candidates to run in the election. On the basis of its model publication, "What Every Candidate Needs to Know," IFES can work with the REC to provide vital and timely information on: signature collection requirements, campaign finance regulations and reporting requirements, provisions for equal time/conditions for appearances on state media, a calendar of election-related deadlines, information on appointment of expanded members to election commissions, rights of access of candidate representatives, sample forms, an index of all laws and regulations governing the election campaign, a clarification of which ministries are responsible for which aspects of the election process, and contact information for those ministries, election commissions, and municipal authorities.

E. TRAINING FOR CORE AND EXPANDED MEMBERSHIP OF MUNICIPAL ELECTION COMMISSIONS AND POLLING STATIONS

The Republican Election Commission, Secretariat of Law, and a host of political parties also requested IFES cooperation in the development of a training program for core and expanded members of election commissions and polling site boards. To date, the REC and Ministry of Law have provided some training for core members of commissions, while each party trains B or does not train B its appointees to the expanded membership, which means that there is no uniformity to these efforts. Moreover, the decision of the multi-party Working Group to ban judges from serving on election commissions and polling boards, as is currently the practice, may result in a considerably lower level of expertise among election administrators in the next election. In order to address changes to election practice under new legislation and to ensure the uniformity, efficiency, and integrity of election administration at the polling site level, written training and reference materials and a standardized training program will need to be developed. IFES is in a position to assist with the conceptualization of such a program, materials development, and implementation and supervision of training.

Longer term initiatives are required in the areas of:

F. CIVIC EDUCATION

The development of a civic society, crucial to the sustainability of democracy, requires an informed and active citizenry. Discussions with political parties, government officials, and NGO representatives as well as the results of recent surveys conducted in Montenegro suggest that a significant effort will need to be undertaken to educate citizens about the nature of democracy and to prepare them

for their rights and obligations in a democratic society. IFES was invited by the Government of Montenegro to design a longer term program of civic education aimed particularly at young people and rural dwellers but also war refugees and national minorities. A request was also made by the Ministry of Education to work with educators in the development of lesson plans and instructional materials. IFES would supervise the conduct of a baseline survey on voter awareness to serve both as a tool for the development of a civic education strategy and in program design as well as a means of measuring the impact of civic education initiatives. Delivery mechanisms will need to include the mass media, secondary school system, student groups, cultural associations, and emerging NGOs. One pillar of the civic education program should be creating a culture of understanding on the nature, role, and importance of NGOs in democratic societies. Such a program is a prerequisite to the meaningful development of NGOs in Montenegro. The creation of a sustainable indigenous NGO capable of carrying out civic education, public advocacy, and hopefully NGO sector support should be the aim of a long term civic education program but is an unrealistic deliverable in the immediate future.

G. LEGAL AND TECHNICAL ADVISING ON ELECTORAL REFORM

As noted earlier in this report, the very real political pressure to hold new legislative elections at the national and municipal levels in the spring significantly compress the timeframe in which modifications to existing laws can be thoroughly considered and aired for public debate. IFES has recommended that under such circumstances, the Inter-Party Working Group should focus its immediate efforts on priority issues which proved to be problematic during recent presidential elections and which may have contributed to the *perception*, if not the threat, of fraud. IFES is prepared to assist the Working Group and the Republican Election Commission in undertaking a comprehensive analysis of the presidential, parliamentary, and municipal elections after they are held with the intent of making further legal refinements based on technical considerations outside the polarized campaign environment. IFES can provide options for legal reform and help policy makers and election administrators better anticipate the practical ramifications of their choices by actively employing the institutional, regulatory, and procedural, and educational mechanisms to deal with them.

In addition to programming needs and opportunities which fall directly within IFES' mandate, numerous requests were made which could be met by other US service providers, including the party institutes, media organizations, legal associations. In particular, assistance in classical political party building, social outreach, and message development is required in the increasingly open and competitive political environment. Potential factionalization and instability within the new legislature may also necessitate training on parliamentary procedure, committee organization, and coalition building. Commodities and technical support, as well as training, are also essential to ensure an independent media throughout the country and at the grass-roots level. The professionalization of the journalistic corps was highlighted as a priority. With respect to elections, US assistance was requested in training journalists to cover the campaign and election process in a non-biased manner. Finally, the absence of a professional association of lawyers or jurists, which would provide a mechanism for input in legal would be extremely useful.

X. CONCLUSION

Given the disposition of the current Government of Montenegro toward international assistance and cooperation and tangible efforts to introduce an open and progressive political environment, there is a unique opportunity to foster real and sustainable change in the Republic of Montenegro and, indirectly, the Federal Republic of Yugoslavia. In light of the current crisis, the crucial nature of international support as a means of tipping the balance toward democracy and away from autocracy or war should not be underestimated. Nor should the value of utilizing Montenegro as a model for Serbian development. A system of reciprocity in the provision of aid, ie. assistance based on *demonstrated* commitment to rather than promises of reform, should be the hallmark of future programming within Serbia and Montenegro.

INTRODUCTION

In the aftermath of the republican presidential elections of October 1997, Montenegrin political parties with representation in the republican Assembly have entered into a multi-party agreement (Montenegro, 1997b) to enhance the development of democratic institutions in the Republic, including through a number of concrete measures. These measures included, *inter alia*, a commitment to conduct parliamentary elections by the end of May 1998; to intensify the work of an all-party task force to propose improvements to several election and election-related laws; and to incorporate certain fundamental reforms into the electoral process in order to achieve fairer and more representative results.

Under the multi-party agreement, reform of Montenegrin election laws has aimed, at the outset, to amend the existing laws on the Election of Councilors and Representatives (Montenegro, 1997a, pp. 27-60, hereinafter referred to as the ALegislative Election Law@); on the Register of Electors (*Id.*, pp. 61-67, hereinafter ARegistration Law@); on the Financing of Political Parties ("Political Finance Law"); and on Public Information. The parliamentary group which was established for this purpose was divided into two sub-groups, one working on the first two laws cited and the other the second two. The working group submitted draft legislation on all four subjects in late 1997 and in January of this year the Republican Assembly approved the drafts. Outgoing President Momir Bulatovic refused to promulgate the laws, however, necessitating that they be passed anew by the Assembly for promulgation by the new President, Mr. Milo Djukanovic. On February 17, a revised Legislative Elections Law was passed by the Republican Assembly and the Registration Law was passed on February 11.

The International Foundation for Election Systems (IFES), with the support of the U.S. Agency for International Development, conducted a Voter Awareness Assessment in Montenegro commencing in November 1997. As part of that assessment, IFES experts also studied related matters including election administration in Montenegro and the legal framework for the upcoming parliamentary elections and longer-range reform of the electoral system. Based on the findings of the IFES team (see IFES, 1998 and Barnes, 1997), the present consultant was asked to conduct an additional, legal review of three of the proposed electoral laws - the Legislative Election Law, Registration Law and Political Finance Law. (See Montenegro, 1997 c, d & e.) This draft legislation was obtained by the IFES team during their assessment and does not reflect changes made to the drafts following former President Bulatovic's refusal to accept the laws in early January.

The consultant accordingly submits the following commentary on proposed election laws of the Republic of Montenegro. It should be understood that these comments are suggested by analysis of the proposed laws themselves, certain other materials (see references), general legal principles, comparative practice and international standards. (The consultant did not have the opportunity to visit Montenegro in connection with this assignment).

The proposed laws within the scope of this report could provide an adequate basis for the upcoming parliamentary elections in Montenegro as well as for longer-range reform of the Montenegrin election system. At the same time, there are numerous issues which should be addressed in order to improve administration of the upcoming elections and the probability that they will be viewed as a legitimate expression of the democratic will of the people of Montenegro. In addition, other, more far-reaching, reforms should be considered in order to create a stable basis for future elections and further development of democratic political institutions in the Republic.

The following comments are offered in the hope that they will be helpful to Montenegrin experts and other interested parties in refining the new election laws that are currently proposed and considering more sweeping changes in the legal and administrative structure for elections thereafter. The commentary is organized as follows: I. Overall Observations; and II. Specific Comments on the three laws under consideration (including both general comments and running commentary on their detailed provisions).

OVERALL OBSERVATIONS

A. CONSTITUTIONAL BASIS

The power of the Montenegrin government to make laws concerning electoral matters is grounded in the republican Constitution (Montenegro, 1992). Article 81(3) of the Constitution grants overall lawmaking power to

the republican Assembly. While this article does not directly address legislation concerning electoral matters, Article 83(2) does indicate that it is the Assembly that has competence in this area, subject to the requirement of that clause that enactment of legislation on certain matters, including Aon the electoral system@, is subject to the requirement of an absolute majority vote in that body.

Indeed, the Constitution makes it clear that, in general, the Republic of Montenegro retains its sovereignty despite participating in the Federal Republic of Yugoslavia (FRY), and that the sovereignty of the Republic is based on that of its citizens exercised through the democratic system (including both direct and representative means). Article 2 (1)-(3) of the Constitution, on Sovereignty, states:

AMontenegro shall be sovereign in all matters which it has not conferred onto the jurisdiction of the Federal Republic of Yugoslavia.”

ASovereignty is vested in all the citizens of the Republic of Montenegro.”

ACitizens shall exercise their sovereignty directly and through their freely elected representatives.@

In addition, the Montenegrin Constitution, through Part Two thereof, provides the basis of the human and political rights of the citizens of the Republic. Article 32 of the Constitution specifically provides the basis of the Voting Right of Montenegrin citizens.

Notwithstanding the continued sovereignty of the Republic of Montenegro, particularly with respect to the electoral and other rights of its people, the legal authorities of other entities C including the FRY C have sometimes intervened in Montenegrin electoral processes. During last year=s presidential election, for example, the Federal Constitutional Court invalidated a provision of the Montenegrin presidential election law, permitting two candidates to be nominated from a single registered political party. In addition, the Yugoslavian Federal Prosecutor indicated that the Montenegrin Supreme Court had violated federal law when it ordered updating of the voter registry during the period between the first and second rounds of voting in that election, as a result of massive deficiencies revealed during the first round. Subsequently, the Montenegrin Assembly passed a resolution condemning the intervention of federal authorities in republican elections and blocking implementation of such actions in the Republic.

Despite this history, the draft election laws within the scope of this report -- the Legislative Election Law, Voter Registry Law and Political Financing Law C do not clearly and unambiguously proclaim Montenegrin sovereignty in these matters within the terms of the proposed laws themselves. Instead, there are relatively weak references on this point in the Commentaries which accompany the actual text of the bills. For example, the Commentary on the draft Legislative Election Law states:¹

Constitutional Grounds for this Draft Law

A The constitutional grounds for this Draft Law are contained in Article 12, Paragraph 4 of the Constitution of the Republic of Montenegro prescribing that the Republic regulates, by its legal provisions that are in conformity with the Constitution, among other issues, the issues of significance to the Republic.@

Unfortunately, this very paragraph reveals the relative weakness of the proposed legislative claim in this regard and also does not go as far as possible to support it. In particular, it appears undesirable to ground such an important claim in what is merely a Aresidual@

paragraph in the constitutional article which is cited. (See footnote for the relevant text.)¹

Actually, it would probably be better to appeal to other constitutional provisions, including those cited earlier, as well as this reference. Those provisions, it will be recalled, include: the basic article on the sovereignty of the Republic, Article 2; the articles on the relevant powers of the Assembly, including Articles 81(3) and 83(2); the provisions on the basic rights of the Montenegrin people, such as their human rights and right to vote, which are secured through the republican Constitution (see Part Two, on Freedoms and Rights, especially Article 32 on the Voting Right); the election of the political branches (presidential and legislative) of the Montenegrin government as described in the portions of the Constitution on these branches (see Part Three, on Organization of the State); and the empowerment of the Montenegrin Constitutional Court to decide on electoral disputes (see Article 113, paragraph 8).

Of course the assertion of constitutional authority by the Assembly would not in and of itself prevent legal attacks on the republican electoral system by external authorities, including those from the FRY. But at the very least, including such statements of authority in the proposed electoral laws, would complicate any attempt by the federal or other external authorities to intervene in republican electoral processes through legal action or other means. Inclusion of such references would also have important political as well as legal value.

It is therefore recommended that appropriate provisions be drafted demonstrating the basis in the republican Constitution for the enactment of these electoral laws. These provisions should strongly be considered for inclusion in the legislative language of the bills, and not relegated to an accompanying commentary.

In addition, as will be seen below, many provisions of the proposed laws C particularly the Legislative Election Law C parallel or restate actual provisions of the Constitution, but do not

Article 12:

Legislature

At the law shall prescribe and regulate the following, in accordance with the Constitution:

Manner in which rights and freedoms shall be exercised if this is necessary for their exercise;

Manner of establishing, organizing and competence of the state authorities and the procedure before the authorities if this is necessary for their proper functioning;

The system of the local self-government;

Other matter[s] of interest for the Republic."

cite them as such. In order to clarify the constitutional basis for the law and these provisions in particular, as well as to ensure their uniform understanding and application, appropriate references to the Constitution should be added within these provisions as well. (This point will be repeated in the specific comments which address these provisions.)

ORGANIZATIONAL ISSUES

The multi-party agreement on democratic principles (Montenegro, 1997b) contained major commitments regarding the reform of electoral institutions and specific objectives to that end. The primary goal on elections was shortening the term of the current republican Assembly and preparing for Afree, fair and democratic parliamentary elections ... [to be] held at the latest by the end of May 1998". To this end, the parties also agreed on specific electoral objectives to be accomplished through legislative amendments.²

It was noted earlier that the Assembly actually adopted new electoral laws during its Fall 1997 session, but that the bills were rejected by the outgoing President. At the time of writing (January 1998), the Assembly is planning to consider these bills again imminently, probably during the February legislative period. The priorities for the parliamentary working group at this time focus on the proposed Registration Law, Public Information Law (not within the scope of this report) and Legislative Election Law.

Several commentators (IFES, 1998; OSCE, 1997; Barnes, 1997) have concluded that current Montenegrin election laws are deficient in certain respects, including an overall lack of clarity concerning the responsibilities of government bodies; insufficient detail concerning procedures; conflicts among the laws; and a whole range of more specific issues, many of which are addressed separately in what follows. It appears unlikely that all these issues can be addressed during current legislative consideration of the proposed bills, or even prior to the expected May parliamentary elections.

This report therefore focuses primarily on the texts of the three proposed laws within its scope (Legislative Elections, Voter Registration and Political Finance). Every effort will be made to analyze problems that might arise as a result of enacting these bills into law, both in terms of the specific provisions of each and in terms of their interrelationships. (It has been commented that during the development of the current legislative amendments by the working group, there has been relatively limited consultation with persons knowledgeable about election law and administration, specifically within Montenegro, and between the sub-groups responsible for preparation of drafts of the different bills. See IFES, 1998; Barnes, 1997.)

It would also seem advisable, however C and some effort has been made in this direction in the current report C also to look beyond the anticipated adoption of the bills currently under consideration toward the eventual creation of a comprehensive election code uniting the core legislation on various types of elections (presidential and republican and municipal assemblies, and also perhaps referenda), key administrative and legal provisions (such as the

formation of election commissions and delineation of complaint procedures), and closely related legislation such as voter registration and political party financing. (See *Id.*)

Another advantage of adopting comprehensive election legislation in the future would be to permit the conduct of combined elections. In view of conflicts between the Presidential and Legislative Election Laws (see OSCE, 1997), it would be difficult to conduct these types of elections simultaneously without creating duplicate election machinery. Yet one might imagine a situation in which, for legal, political or financial reasons, it would be desirable to do so.

On the other hand, if the adoption of comprehensive legislation cannot be anticipated in the foreseeable future, then consideration should be given to the opposite approach. That would involve the further separation of the legislative provisions regarding different types of elections, so as to minimize conflicts between the provisions that have been combined into a single law. This situation applies particularly with respect to the current (and proposed) Legislative Election Law C or A Law on the Election of Councilors and Representatives@. Many provisions of this law are confusing and probably conflicting when applied to the two different kinds of elections that are within its scope.

Finally, further rationalization of the election laws would enable other improvements of the electoral system to be undertaken (see IFES, 1998). First, the roles of existing authorities (such as the Republican Election Commission [REC] and municipal election commissions [MECs]) would be clarified and could be further strengthened. Second, such authorities would be in a better position to develop further rules and regulations to improve electoral administration (see OSCE, 1997). Third, election authorities would be in a better position to undertake other programs related to elections, such as civic education (see IFES, 1998).

These factors are reflected as the primary recommendation of the OSCE observation mission to the 1997 presidential elections:

The Legal Framework and Administrative Procedures

AThere is an overriding need for consolidation of the existing legal framework, with clear and precise laws as well as rules and regulations, which further expand on the laws, and define and clarify the various technical and administrative aspects of the electoral process.@ (OSCE, 1997, p. 24.)

DRAFTING ISSUES

Related to the issue of the organization of the legislative effort on election law reform is the question of improving the drafting of the bills and integrating their provisions more carefully with each other and related legislation. One problem in this regard is the lack of uniform and consistent usage of certain terms.

The term Apolitical party@, for example, is widely used in the election laws, including the proposed Legislative Election Law and Political Finance Law. One can assume that it is intended that such organizations, in order to exercise the prerogatives of political parties under this law, must qualify as such under other legislation. While in Montenegro parties must register with state authorities prior to being recognized as such no reference is made, either in a formal definition or elsewhere, to this requirement.

Also, despite the recent history of disagreement within certain political parties in Montenegro, there is little attempt to clarify how the parties are supposed to undertake various specific activities under the law. With respect to the submission of electoral lists (lists of candidates) for legislative mandates, for example, the parties under Article 38 of the proposed Legislative Election Law are supposed to proceed Athrough the procedures defined by the regulations of those political parties.@ There is no requirement that copies of those procedures be submitted to the election commission receiving the proposed list, or that any relevant records be supplied demonstrating that the procedures have been followed (such as minutes of any nominating convention that may have been held).

Another example is the provisions in Articles 24 and 29 of the same proposed law (which shall be considered at greater length later) which permit Athe political parties that are represented in the parliament@ to propose the names of individuals for appointment by the competent Assembly to seats on the Republican or municipal election commissions. No guidance is given as to how these parties are supposed to make this decision, or present it to the Assembly. For example, would it be the party organization (outside parliament) who would make this decision and forward it somehow to the Assembly, or the parliamentarians acting within their own party Acaucus@, or legislative organization?

In addition, there is an apparent ambiguity regarding whether the reference in both cases is to parties which are represented in the republican Assembly, or the relevant assembly C *i.e.*, Republican in the case of appointments to the REC, or municipal for appointments to the relevant MEC. With respect to this entire procedure, furthermore, there is no provision for the participation of parliamentarians from lists that may have been submitted by citizens groups, not political parties, even though they may also have achieved substantial representation in the relevant assembly.

On the subject of so-called groups of citizens, the proposed Legislative Election Law continues the practice from previous legislation of permitting such groups to nominate a candidate list in the event they can meet the applicable requirements. Yet, unlike the case of political parties, it is not clear how these groups would be formed or exercise their prerogatives. Presumably Montenegro, like other formerly socialist countries, has established laws regulating the activities of public associations, by whatever name they are referred to C Asocial associations,@ Anongovernmental organizations@ (NGO=s) or something similar. But the proposed Legislative Election Law does not make clear whether the groups of citizens it refers to would be organizations which are subject to registration or other requirements of

legislation on that subject.

The proposed Legislative Election Law (LEL) also regularly uses the rather cumbersome locution Asubmitters of electoral lists@ to refer collectively to those organizations C i.e., political parties and groups of citizens C which have the prerogative of nominating a list of candidates for election. At various places in the bill, furthermore, the term is used without indication whether it refers to organizations which have submitted lists (prior to approval) or those whose lists have been accepted by the competent election commission.

It is important, in order to eliminate confusion over these types of provisions, to adopt uniform election terminology and standardize references. While this is perhaps best done in connection with development of a comprehensive election code, it should be carried out to the extent possible in connection with amendment of existing laws. The following terms are suggested for this purpose: Aelectoral association@ to refer to organizations which have the prerogative of nominating candidates, and Aelection contestants@ to describe organizations which have had their lists of candidates approved. Such terms, if introduced, must of course be defined as clearly as possible within the text of the proposed law or, if necessary, by reference to definitions contained elsewhere in law.

Another useful term that might be considered for adoption in the proposed LEL is that of the Acampaign period@, as distinguished from the entire election period. The campaign phase of an election is generally defined as commencing with the approval of candidate lists and ending at a time shortly before election day.

STRUCTURE AND OPERATIONS OF ELECTION COMMISSIONS

1. Structure

(a) Timing of Appointment and Term of Office

As in other parts of former Yugoslavia (including Serbia; see IFES, 1997b), full Republican and municipal election commissions in Montenegro are ordinarily constituted shortly before the date parliamentary elections are announced. Under the proposed and existing Legislative Election Laws, the members of the commissions are appointed to terms of four years, which corresponds to the normal term of an elected parliament. Under the proposed LEL, new election commissions would be appointed within seven days of its effective date, in order to administer the early republican Assembly elections for which this law is being prepared.³ Under Montenegrin election laws (similar to the case in other republics of the former Yugoslavia), the core membership of an election commission is described as the "permanent" composition of the commission. Once the election period begins, parties that qualify through nominating a list of candidates have the right to propose a representative to the "expanded" composition of the commission. The permanent composition of commissions are sometimes also referred to as the Appointed members@ and the expanded composition the Authorized

members@. (See proposed LEL, Art. 18.) The two classes of members will occasionally also be referred to here as the Acore@ and Arepresentative@ membership.

While Montenegrin election laws (like those of other republics of the former Yugoslavia) give the appearance of a permanent electoral administration structure, it is questionable whether a significant permanent structure in fact operates between elections:

It does not seem that there are any particular functions assigned to the commissions during the time between elections. Compilation of the Voter Registry, for example, is not an ongoing process but appears to occur only for specific elections, and is in any event actually performed by other bodies (including the republican security and police structure, as well as municipal authorities). There do not appear to be any substantial and continuing civic education or election worker training programs. So while the election commissions are constituted between elections, they do not seem to exercise any significant functions after an election has ended.

It should be stated, however, that this is not due to a lack of effort and competence by election commissions but rather a lack of staffing, funding and authority granted to commissioners. In discussions the IFES Team had with several commissioners from the REC, they expressed a willingness and enthusiasm to undertake activities traditionally within the domain of election commissions such as pollworker training and civic and voter education.

Various issues are also raised by the manner of appointment of election commissions (particularly the Republican and municipal commissions) under the existing and proposed LEL:

(b) Separation of Powers and Appointment of Election Commissions

Similar to the approach taken in the former Soviet Union and other Socialist systems, as well as those of certain former Yugoslav republics, the election laws of Montenegro give the power to establish and make appointments to election commissions directly to the relevant legislative assembly. During the socialist period it was commonly understood that the State had a strong influence over the conduct of elections and that election commissions and other bodies set up for this purpose were only quasi-autonomous. Assigning the power to supervise such bodies directly to the parliament helped give them a greater image of independence from State power, since the parliament was nominally a popularly-elected body representing the views and interests of the public. (One might mention that giving the power to supervise election administration to parliament also helped its members to protect their own electoral interests.)

As mentioned previously, the current Legislative Election Law (Articles 29 and 30) provides for appointment of the President of the REC and his Deputy by the republican Assembly, from among distinguished judges, and for the appointment of similarly qualified individuals to the other core membership and deputy positions. Similar provisions apply, *mutatis mutandis*, to the appointment of the core members of the MECs by the competent municipal assembly. The proposed LEL (see Part V) retains the appointment of election commission members by the relevant assembly, but eliminates the requirement for the selection of judges.⁴ It also provides for the parties which are represented in parliament to propose candidates for appointment to the

commissions. (A similar system is followed in Serbia, except that the role of political parties is not explicitly recognized in the law; see IFES, 1997a.)

The doctrine of Separation of Powers is enshrined in the Constitution of the Republic of Montenegro.² In many other constitutional systems founded upon this doctrine, it is interpreted to prevent the legislative branch from taking certain actions of an executive character. This would include most actions that cannot be addressed through the enactment of legislation, *i.e.*, laws of general applicability. Appointments of officials to state bodies are usually considered to fall within the class of particular actions that are reserved for the executive branch of government, although the legislative branch may legitimately have a role in such appointments (*e.g.*, through proposing candidates, or confirming their selection).

In the United States, the doctrine of Separation of Powers with respect to appointments is observed in both ways just mentioned. In certain cases, the Constitution explicitly gives the upper house of Congress, the Senate, the power to confirm presidential appointments. In other cases, established through particular laws, Congress has reserved the right to propose a number of the members of state bodies. In these cases, however, the President is generally instructed to select the membership from among a list submitted by Congress and is usually also given the right to make his own appointments. (This approach is commonly followed in the establishment of "mixed" commissions including both government and non-governmental personnel.)

Similar methods consistent with the principle of Separation of Powers are often followed in comparative international practice with respect to appointments to electoral bodies. In the Russian Federation, for example, prior to 1994 the chairman of the Central Election Commission was appointed by the President, subject to approval by the State Duma. However, because this practice was regarded by many as undermining the independence of the CEC, a political compromise was reached which sought to improve the independence of the CEC by appointing 5 members each from the lower house of Parliament, the upper house of Parliament, and the executive to a total of 15 members. Leaders of the Commission are now selected from among the members by secret ballot.

There are also other ways to address this issue. For example in Romania, under existing national election laws, the judges of the Supreme Court choose among themselves by lottery the necessary number for core membership positions in the Central Election Bureau. The Chairman of the Bureau is then chosen, again by lottery, from among the judges who have been selected in this manner.

Article 5 of the Constitution states:

DIVISION OF POWER

At the government of Montenegro shall be arranged according to the rule of the division of power into the legislative, executive and judicial.@

The failure to follow Separation of Powers principles in the appointment of the REC and MECs may lend the appearance to this body that it will be unduly subject to influence by political interests in parliament. This appearance will only be increased by the explicit role granted to the political parties in parliament over the appointment of election commission members. It may be preferable to find some alternative to this approach that is politically acceptable but is more consistent with the principle of Separation of Powers.

Another related problem relates to Article 18(2), which states that:

At the election bodies must have members of different political parties in their permanent composition, in proportion to the number of seats of each party in individual assemblies.@

This provision appears to apply to polling boards (PBs) as well as election commissions (the REC and MECs). It is likely further to raise suspicions about the independence and objectivity of electoral bodies and their members.

In many formerly socialist countries, including in the former Yugoslavia, members of political parties are excluded from serving on electoral bodies. (This is legally true in Serbia, but it has been regularly alleged there that such persons have been appointed regardless.) The exclusion of political party members presumably reflects suspicion of the old ruling parties, as well as a feeling that it is not yet normal practice for people to associate themselves with other parties; therefore it is felt that those persons who join parties must be activists. In more consolidated democratic systems, membership or association with a political party is not a disqualifying factor for service in election administration, but it is expected that such membership will not influence the work of the individual in question.

It is hoped that Montenegro will reach the point in its democratic development where participation in politics is widespread, and that persons associated with political parties will be expected to be capable of operating independently of them. At the present time, however, one wonders if that is the case. It may, therefore, be desirable to eliminate the requirement that the membership of electoral bodies reflect the representation of political parties in government. It would perhaps be better to draft additional provisions, specifically concerning violations and related penalties, requiring election officials to operate independently of political influences from whatever source.

Under current political circumstances, however, the inclusion of political parties in the core membership of election commissions may at least serve to decrease suspicions among parties and the government through a mutual monitoring effort on electoral boards. As there is no guarantee that non-party appointees (i.e. academics, technical personnel, etc.) will truly act independent of any political interests, an additional measure of transparency may result from their participation.

Operations

(a) Administrative Transparency

Another fundamental institutional issue associated with the current as well as proposed system of electoral administration in Montenegro is the absence of transparency regarding key parts of the administrative process. It is often unclear from the existing or proposed laws how the REC and other election commissions are to obtain the necessary administrative and technical support to fulfill their responsibilities. To the extent that such matters are addressed, little transparency or accountability is created with respect to these aspects of election administration.

Under both the old Legislative Election Law (LEL) and the proposed new one, election commissions have a secretary who serves as a member of the commission. Under Article 30 of the old law, the Secretary is a government official with expertise and competence in election-related matters.⁵ This requirement does not appear in the proposed LEL, but the new law would nevertheless retain the position of secretary of the REC (in Article 30) as well as of the MECs (Article 25). There does not appear to be any provision in either the old law or the new one for a secretariat, or staff, to election commissions. In actuality, there appears to be little or no professional staff available to election commissions at the republic or municipal level, requiring the involvement of other secretariats and ministries to assist in the administration of elections and other aspects of the electoral process. This practice dissipates administrative responsibility and delegates tasks to organs that, by virtue of omission, are free to operate outside the scope of the election law.

As noted above, the core members of election commissions are mostly supposed to be lawyers (jurists). In other former Yugoslav republics (such as Serbia), there are also requirements that members of the expanded REC should be lawyers, but here that is not the case. (This is a separate, but related, issue concerning the qualifications and expected deportment of the representative members.) It is true that lawyers are generally thought to be skillful persons, knowledgeable in understanding and applying the law, as well as often individuals of considerable professional as well as personal integrity. But there is little reason to believe that persons with a legal background are particularly well qualified to exercise the administrative (as opposed to juridical) aspects of the election process. One must assume, therefore, that while these individuals are responsible for supervising election administration there may well be aspects that are in fact conducted by other personnel, including those of state organizations.

This situation is exacerbated by the extremely tight timelines under which election commissions must operate, which other commentators have pointed out may have to be lengthened for various reasons (IFES, 1998; OSCE, 1997). Confronted by these challenges, it would be very difficult for members of election commissions, themselves newly-appointed and running a newly-formed organization, to take the necessary actions without considerable advice as well as other support from other government bodies.

One example is the appointment of polling boards (PBs), which would be the responsibility of the relevant MEC under Article 27(4) of the proposed LEL (similar to Article 27 of the current law). Not only must the MEC, prior to 15 days before the election, arrange the location of the polling stations and supervise the setting up of their facilities, it must also appoint three members (plus an equal number of deputies) to each PB. It should be asked where the MEC could obtain the names of appropriate personnel without relying heavily on advice from municipal government and other possibly interested sources outside electoral administration.

Of course, it is inevitable that other state bodies will be required to assist electoral authorities, particularly when a jurisdiction does not have a well-developed electoral administration operating continuously and exercising regular and substantive functions. This fact is recognized in Article 17(3) of the proposed LEL, which states:

All state agencies and organizations are bound to offer help to the bodies administering the election and provide them with the data necessary for their work.@

It is also well to keep in mind that election administrators are supposed to be as independent and autonomous as possible, as required by the first clause of that article:

The bodies in charge of administering the election are self-governing and independent in their work and perform their duties in conformity with this and other laws as well as with regulations enacted on the basis of these laws.@

The concern in this respect is merely that election administrators will not have the means to achieve the latter standard, and will instead be forced to rely on other state bodies to an extent that could compromise their independence. (See IFES, 1998; OSCE, 1997, p. 25.) As the OSCE concluded after the recent presidential elections:

There is ... a need to include a more detailed provision in the electoral law as regards the independence and impartiality of the permanent members of electoral bodies in the performance of their duties under the law.@

There is [also] a need to review the provisions of the law in respect of the powers and competencies of the electoral bodies, and to define more clearly the roles of the various Ministries and other public administration bodies. A distinction must be established between electoral administration on the one part and logistical operations on the other part.@ *Id.*

(b) Role of Expanded Membership

Like the old LEL, the proposed LEL is rather unclear on the role of the party representatives who constitute the expanded membership of election commissions and polling boards. Numerous provisions on this point appear to be in conflict, either directly or indirectly, so that it would probably not be useful to go through them in detail here.

With regard to the authorized party representatives on election bodies, the questions are essentially quite simple: When do they assume membership; what are their rights and duties (including specific functions to be performed); what standards govern their conduct; and when does their status on the election commission normally cease?

Under the proposed LEL, the relevant commission approves the appointment of party representatives a short time (48 hours) after approval of a party's list of candidates (see Article 31). The representatives are not actually admitted until later, however (apparently after determinations have been made with respect to all candidate lists which have been submitted), and it is only at that time that election commissions begin to operate in their expanded mode (see Article 19). Even at this point, however, it is not clear whether the representative members have full rights to information and participation in the business of the commission, including voting on decisions. At a minimum, the representative members have the right to inspect certain materials within five days of the election (see Article 77). The election commission is able to conduct its business without their participation; Article 18(1) states:

At the election bodies may operate in their permanent (appointed members) or extended composition (authorized representatives).@

Finally the extended composition terminates at the end of the election,@ but that phrase is not specifically defined.

Advantages and disadvantages have been experienced in different countries with respect to the manner of inclusion of party representatives in election commissions. Election administration in some countries (such as Romania) has apparently benefited from fairly full participation by party representatives, including involvement in decisionmaking by election commissions, as well as the work of polling stations. Other countries limit the participation of representative members to an advisory role on commissions, and a status akin to observers at polling stations.

Whatever model is adopted, it is probably best to be clear and consistent with respect to the role of the representative membership of electoral bodies. In Montenegro, past practice appears somewhat ambiguous with respect to election commissions, and mixed on polling boards (where some chairmen have reportedly permitted party representatives to participate in the work, or parts of it, while others have tried to keep them at a distance). While it is desirable to preserve some discretion for the core members of commissions and boards in this matter, it would nevertheless undoubtedly be better to be clearer in the proposed law on the intended role of party representatives to all electoral bodies.

E. NOMINATION OF CANDIDATES

Part VI of the proposed LEL describes the system for nomination of candidates to legislative office by political parties and citizens' groups. In a change to the established procedure

(under the current LEL), political parties which are represented in parliament, as well as citizens= groups and others, would be required to submit a substantial number of signatures in support of their lists of candidates. This number C one percent (1%) of the number of registered voters in the jurisdiction at the time of the last election (see proposed LEL, Art. 43) C is in line with prevailing international practice.

In the past, established political parties were not required to submit signature petitions at all. Citizens= groups and others were, but the numerical requirements were relatively low.

The IFES assessment team which visited Montenegro last year concluded that it might be undesirable to require established parties to engage in extensive signature collection (IFES, 1998). The reason for this conclusion was to encourage the formation of regular parties as a buttress to more stable democratic politics. This consultant understands these reasons but, nevertheless, believes that it is best to require established parties to meet the test of public support for their candidates in the same way as others.

Established parties do remain favored in the proposed system, furthermore. Under proposed Article 43, parties or groups submitting nominating petitions must support them by the quoted number of signatures regardless of the size of the candidate list which is put forward. This means that well-established parties, which have found candidates for a large number of assembly seats, are not required to submit any more names than other parties nominating a smaller list.

In fact, many electoral systems prepare a different number of signatures required for nomination of a candidate list according to the number of candidates put forward. The consultant tends to favor this approach, since it puts all submitters on the same level with regard to demonstrating public support, regardless of the size of their party organizations and scale of their electoral efforts.

The provisions of Part V of the LEL regarding the review of nominating petitions by the competent election commission are rather sketchy. The consultant strongly agrees with the recommendations of the IFES team (see IFES, 1998) that more specific and effective procedures and standards should be established in the proposed law for review of signature petitions.⁶ As it is, there is virtually no guidance for the competent commission concerning how and to what extent to review the contents of a nominating petition, including signature lists.

Another problem in this regard noted by the IFES team is the very short time available to the competent election commission for receipt and review of nominating petitions. Under Article 46 of the proposed LEL, petitions can be submitted as late as 15 days prior to the election. Under Article 47, the commission has only 24 hours to make its initial determination concerning the validity of a submitted petition. Even if more specific procedures and standards were introduced for the review of nominating petitions, they would be very difficult

to reconcile with these time requirements.

Another issue concerns the lack of established standards for the actual collection of signatures. Article 45 in particular provides little guidance in this regard. It is recommended, at minimum, that each person collecting signatures be required to identify himself and to sign each sheet, preferably under an attestation that the signatures were collected by him and that he personally confirmed the information put down by the electors.

There should also be other limitations on the signature-collection process, such as the suggestion by the IFES team that this activity should not be permitted in certain environments such as government offices and any place of work. In addition, it should be made a violation of the law to pay voters to sign a petition or induce them to do so through offering a material benefit or threatening the loss of some privilege or benefit.

One Montenegrin election practice that is particularly perplexing is the ability of political parties and others who have submitted lists of candidates, some of whom have been elected, to assign half the mandates awarded to candidates on their list regardless of their order on the list. (See Article 100 of the proposed LEL and Article 99 of the old LEL.) The exercise of this power by parties and others who have made an appeal to popular support could result in a loss of their credibility and a rise in apathy and disenchantment among voters. One can also wonder whether this provision is fully in accordance with the voting rights of the Montenegrin people enshrined in Article 32 of the Constitution, especially clause (4) which states that, AElections shall be free and *direct* ...@ (emphasis added).

COMPLAINT RESOLUTION

The main provisions regarding the resolution of complaints related to election administration are in Part XI, on AProtection of Suffrage@, of the proposed LEL. Under these provisions, appeals from the actions of election commissions (including polling board) go to the next level commission; appeals from the REC go to the Constitutional Court, in accordance with Article 113(8) of the Montenegrin Constitution (which is not cited as such in the article). The actual rules governing appeals and their consideration, in a procedural sense, are not specified except through the provision in Article 116 that AAll the procedures ... shall be regulated in accordance with the rules regulating ... administrative procedure.@

The absence of detailed complaint procedures in the election laws of the Republic of Serbia, combined with references such as the above to other legislation (including that regarding judicial appeals from various administrative decisions), combined to create a chaotic situation in the aftermath of the hotly-contested municipal elections in Fall 1996. The former Yugoslavian state and its constituent republics had highly developed civil law systems, including detailed procedures for judicial appeals, which continue in the laws of the separate republics today. It would appear advisable, therefore, for the working group to enquire further into this matter, and to draft an election-specific set of complaint procedures if

necessary.

Another aspect of election practice in the region that produced considerable confusion as well as confrontation in the situation mentioned above was the presence of provisions in the election laws calling for automatic invalidation of the election in polling stations where certain violations are found to have occurred. These provisions tended to lead to provocations by parties which were losing in certain areas and whose leadership or activists wished to create reasons to challenge the results and if possible nullify them.

There are several provisions in the proposed LEL which require the invalidation of election results at a polling station in certain situations. Some of these involve discrepancies in the ballot count, and others technical violations within or in the vicinity of the polling station (such as certain kinds of activity within the station or displaying posters in its vicinity on election day). On a previous mission to Serbia, the consultant was informed that during the 1996 municipal elections a large number of violations that were reported were probably provocations or overreactions. Challenges were entered against polling stations near which posters were observed, even though it could not be shown that the posters were hanging during polling hours or had influenced voters. A challenge was brought against the results at two polling stations which were connected with a third, on the grounds that a candidate proceeding to vote at his own polling station walked past the others! The strict rules on ballot accounting also probably encouraged dishonest and unscrupulous officials to enter additional ballots into the ballot stream in order to create a violation. (See Finn, 1997; IFES, 1997a.)

It is, therefore, unwise to retain provisions that strictly call for the invalidation of results in the event certain specific events occur at a polling station. Instead, general standards should be established through statute and the relevant commissions, as well as the Constitutional Court, should have it within their discretion to apply them to the case at hand, choosing from one of the available remedies according to the actual seriousness and effect of the violation.

PROTECTION OF MINORITY INTERESTS

Ethnic Minorities

According to published sources, the population of Montenegro includes several minority ethnic groups, or nationalities, such as Muslims (nearly 15%) and Albanians, Serbs and others (under 10% each). The participants in the multi-party agreement on democratization (Montenegro, 1997b) accordingly agreed that the single republican electoral constituency envisioned in the agreement would be Amodified so as to ensure adequate representation of the Albanians in the Assembly of Montenegro@.

The proposed LEL attempts to achieve this objective through Article 13, which would create a second constituency. The consultant assumes that the second constituency has been

designed with the expectation that Albanians could achieve a representation in the republican Assembly similar to what they hold at the present time.⁷ The minority could be relatively assured of the continued protection of their interests in this way by the fact that this provision would be included in the main body of the LEL and not in some other law (such as a special implementing law on districting); so any amendment would require the support of an absolute majority in the Republican Assembly.³

The IFES assessment team has recommended an alternative approach, under which the electoral interests of the Albanian minority could be accommodated within a single republican constituency (see IFES, 1998). This would involve lowering the proposed (and current) threshold for representation in the republican Assembly of four percent to only three percent (3%). While this is an attractive solution, it has presumably been considered by the participants in the parliamentary working group. Adoption of this alternative would also weaken the protection against the entry of fringe parties into the legislative system which is afforded through the existing threshold for representation.

The present consultant was previously asked to provide information on the general question of protection of minority interests in national parliaments during an assignment in Moldova. The question was raised on behalf of an ethnic minority in that country, the Gagauz, who are Christian Turks and whose population is relatively localized geographically. The consultant developed the following information on approaches to this problem in that context (see IFES, 1997b):

Overall, there appear to be four or five methods of providing special protection for minority interests in parliament:

1. Districting: In proportional representation (PR) systems, minority interests are usually protected through the establishment of the correct number and distribution of electoral districts to allow minorities to achieve parliamentary representation. Minority interests are usually not well protected through large districts, including single national districts. They are better represented through smaller districts, especially if the districts are drawn so as to reflect the distribution of minority population. On the other hand, there are limits on how small districts should be. If districts are drawn so small as to have fewer than 5-6 representatives elected from each, then the principle of PR begins to break down arithmetically, and the

See Article 83(2) of the Montenegrin Constitution (Montenegro, 1992). Under Article 13(3) of the LEL, however, the number of parliamentarians to be elected from specific constituencies is to be determined by the republican Assembly through a Aspecial decision@. It is not clear whether this action would also be subject to the constitutional requirement of support by an absolute majority in the Assembly. Even if not, however, the Assembly=s action could presumably be challenged before the Constitutional Court in the event its action did not accurately reflect the norm of representation C one representative to be elected for each 6,000 voters C established in Article 77(2) of the Constitution.

number of representatives elected from each party no longer bears a close relationship to the percentage of the vote they receive.

2. Single Mandate and Mixed Systems: These systems inherently better reflect minority strength in local districts than PR, provided the district lines generally coincide with areas of minority strength.

3. Side Elections: The most commonly-used special technique to achieve minority representation in national parliaments is to conduct side elections. While there are many variations on this approach, it generally involves permitting all voters to participate in general elections according to whatever system is generally followed. Designated minority voters have, in addition, the ability to participate in a special, or side, election that would result in the election of a special bloc of minority candidates to parliament.

4. Minority Quotas: Another method, which is followed in the world's biggest democracy (India), is to require parties to nominate a certain percentage of their candidates nationwide from various ethnic or other groups. In India, this includes various castes, and also women. This approach helps to ensure that a sufficient number of such candidates are elected to office. (It would be difficult to implement in Montenegro, however, so long as the practice is continued whereby parties which have successfully nominated a candidate list to assign one-half [1/2] of the mandates won by them to listed candidates of their choice, regardless of their position on the list.)

5. Regional Parliaments: Another approach, not directly related to the question of minority representation in the national parliament, is establishment of special regional councils in areas with large minority populations. This approach is, however, more closely linked to the question of political status (including possible autonomy) of minority areas than the protection of minority interests in the method of election to the national parliament.

Another possibility -- which could be followed under the laws of Moldova -- would have minority (there, Gagauz) candidates participate in a special Alist@ composed of independent candidates. This way, they could obtain enough votes to win election, but without having to pass the threshold for party representation in Parliament, which is also 4% in Moldova. This approach also might not be workable in Montenegro, however, in view of the requirement that submitters of electoral lists put forward enough candidates to contest one-third [1/3] of the seats subject to election. (It should also be commented with respect to Moldova that in the past the desired number of Gagauz candidates did take seats, mainly as a result of their being placed relatively high on the respective candidate lists of the main national parties.)

The consultant is unable to put forward an entirely satisfactory approach to the current issue in Montenegro with respect to satisfaction of the minority rights of Albanians consistent with maximum possible movement toward a system based on proportional representation in a single republican constituency. He understands the reasons behind the current approach,

involving the creation of a limited second district, but believes that this district may be perceived as not really genuine (*e.g.*, in terms of historic, geographic or administrative factors) but rather constituted merely in order to achieve the desired goal of minority representation.

If this is to be the case, then perhaps it would be better to be realistic and follow either approaches #2 or #3 described above. Either special elections could be held for minority voters from the protected group (as in approach #3), or a small number of special districts could be created for application of another method of election (as in approach #2). For example, a certain number of single-mandate districts could be created in areas where there is a concentration of minority voters; candidates elected from these districts would take their seat in the republican Assembly along with candidates elected through PR republic-wide.

It might be objected that some aspects of the approaches just suggested, or even the approach contained in the proposed LEL, could run afoul of the equal rights and equal voting provisions of the Montenegrin constitution. For example, Article 15(1) of the Constitution provides that AAll citizens are free and equal regardless of any particularities and/or other personal attributes.@ And Article 32(3) provides: AThe voting right is general and equal.@"

On the other hand, Article 77(1) on election of the republican Assembly, which provides that AThe Assembly shall consist of deputies elected by citizens ..., on the basis of a general *and equitable* voting right@ (emphasis added), could be interpreted to open the door for some adjustment to absolute equality to achieve equitable purposes. And Part Two, Section 5 of the Constitution contains a series of articles recognizing the special rights of national and ethnic groups. In this section, Article 67(2) states that protection of these groups Ashall be exercised in accordance with the international protection of human and civic right.@ And Article 73 provides: AMembers of the national and ethnic groups shall be guaranteed the right to a proportional representation in the public services, state authorities and in local self-government.@ Not being an expert on Montenegrin constitutional law, the consultant will leave it to local experts whether the latter articles could be used to justify various ways of protecting minority voting interests, either *de jure* (as through special-purpose districts or side elections) or *de facto* (such as in the manner contained in the proposed law).

Refugees

As a result of the conflict in various parts of former Yugoslavia and other neighboring states, a large number of refugees are currently residing in Montenegro. Published information indicates that the number of refugees is approximately 10% of the total population.

Article 32(1) of the Montenegrin constitution extends voting privileges to A[e]very citizen of Montenegro@ over the age of 18 years. Article 10 indicates that the Republic Ashall confer Montenegrin citizenship on its citizens.@"

The Constitution of the FRY also addresses citizenship issues, however. Article 17 of the FRY constitution states:

“The Federal Republic of Yugoslavia shall confer Yugoslav citizenship on its inhabitants.”

“A Yugoslav citizen shall be simultaneously a citizen of one of its member republics.”

“Yugoslav citizenship shall be regulated by federal law.”

The proposed LEL, in its basic provisions, does not address the issue of federal *versus* republican citizenship in a general way. Article 2, for example, states simply, “Citizens shall elect the councillors and representatives ...”.

Article 11 of the proposed LEL, on the other hand, does make it clear that citizens of either Montenegro or Yugoslavia can vote in Montenegrin elections, provided they meet other requirements, including residency within Montenegro for at least six months prior to the day of the election. It refers to “a citizen of Montenegro or a citizen of Yugoslavia” in this connection.

Citizenship of the FRY⁸ is established under the Yugoslav Citizenship Law which came into effect on January 1, 1977. Under the Law, persons who were citizens of the former Socialist Federative Republic of Yugoslavia (“former Yugoslavia”), and had citizenship in Serbia or the Republic of Montenegro on the date of the proclamation of the Constitution of the FRY (April 27, 1992) are considered Yugoslav citizens. Citizenship is of course necessary to vote in republican and FRY elections.

The FRY Citizenship Law also contains transitional provisions dealing with persons who had former Yugoslav citizenship in another republic. These people had one year (after the effective date of the Law) to apply for Yugoslav citizenship, or three years in special cases. Refugees may be admitted as citizens by decision of the appropriate republican and federal authorities, but only “taking into account the justification of reasons stated in the submitted application and bearing in mind the interests of security, defense and international position of Yugoslavia.” Others may apply anytime, as “foreigners”; their cases would be subject to individualized determination.

There are over 650,000 registered refugees in Yugoslavia who have not yet formally been granted citizenship, despite the fact that most of them desire to remain in Serbia and Montenegro. In addition, there are many other displaced persons from other republics of former Yugoslavia living in the FRY who have not registered as refugees or formally obtained citizenship. It is reported that, especially in earlier stages of the conflict in Bosnia and Herzegovina, some returning Serbs (who were largely supportive of the Serbian regime) were permitted formally to obtain Serbian citizenship. (This conclusion is usually drawn from observing their ability to conduct affairs, like purchasing property, that are limited to

citizens.)

The unclarified citizenship status of the refugees has raised the concern that governments in power could move to grant citizenship to at least some of them in hope of obtaining their votes in elections. This concern appears unlikely to be realized on a large scale since refugee attitudes have turned overwhelmingly against the ruling parties, especially in Serbia. It is still possible, however, that some number of the refugees could formally be admitted to citizenship on a selective basis.

IFES was informed that the 200-300,000 refugees present in Serbia during the republican elections of 1993 probably were eligible to vote, assuming their names were included in the Voter List (see IFES, 1997a). (It is not known how many of these people actually voted.) Under the new FRY Citizenship Law, however, the Serbian government could remove the right to vote from this group, on the grounds that their citizenship had not been formally granted in the first place. It is entirely likely, therefore, that a large number of persons who voted in 1992 and 1993 were not permitted to vote during more recent elections. These reported manipulations in Serbia show how the citizenship issue can be used to affect the composition of the electorate in republican elections, and may indicate that further attention should be given to this problem in amending the election laws.

Another consideration applies with respect to the issue of voting rights *vis-a-vis* citizenship. As noted elsewhere in this report, the Montenegrin Voter Registry is compiled based on the residents' list maintained by the police, and also information from other sources (including municipal authorities). It is not clear whether information concerning citizenship is systematically reviewed in compiling the Registry. Assuming the name of a person who had not formally been granted FRY or Montenegrin citizenship was placed in the Registry, it would be possible for him/her to vote after presenting proper personal identification at the polling station. The main document accepted for this purpose in the past (a Yugoslav ID card) does not contain information on an individual's citizenship. These facts may show that further work should be performed to ensure that non-citizens are not included in the Voter Registry, or that proof of citizenship should be required in upcoming elections.

OBSERVERS

The proposed LEL does not contain a basis for attendance at election operations by neutral observers, either from international organizations or domestic groups. Indeed, the presence of observers at polling stations could be prevented by Article 72(4), which provides: APersons having no rights or duties with regard to the administration of the election, as prescribed by this Law, are forbidden to remain at the polling station.@ (As with many other aspects of polling station procedures, violation of this rule can lead to nullification of the results there, although that result is not automatic. See Art. 72[5].)

Despite this provision, international observers have been allowed to operate during past

elections, including the 1997 presidential election. (See OSCE, 1997.) Domestic observers, coordinated by the Montenegrin Helsinki Committee for Human Rights, were also allowed to undertake monitoring of the presidential election, although there appear to have been some delays in receiving credentials.

There is a provision in the current LEL, Article 22(2), that may create a basis for the presence of observers by providing: *The members of election bodies and other persons monitoring the operations of election bodies shall act according to the rules of conduct laid down by the Republic Election Commission.*[@] A similar provision has not been found in the proposed LEL, however.

It may be that in the past certain Acitizen[@] observers were permitted into polling stations by PB chairmen, as has been reported in Serbian elections. It has been said that these "citizens" were invariably supporters of the ruling party, and that on occasion they were suspected of participating in fraudulent activities within the polling stations. (It may be that such individuals actually obtained membership on the polling boards as representatives of so-called "citizens' groups" that qualified as a result of nominating the requisite number of candidates in the district.)

Despite these reported practices in Serbia, it would still be worthwhile to consider whether the presence of domestic observers at polling stations or other election operations is actually permissible under current Montenegrin law, including the general power of the REC to make rules for the administration of elections. If so, it might be possible to persuade election authorities to permit the participation of *bona fide* observers nominated by NGO's with a legitimate interest in human rights and civil society.

If the power to admit properly qualified observers is not within the mandate of the REC, then the consultant would recommend that such power be granted. Ideally, in order to prevent abuses, the REC should be empowered to consider requests to sponsor observers which are submitted by legitimate and qualified NGO=s with an interest in human rights and democracy. If this authority is included in the law, then the REC should proceed, especially in the period prior to the actual calling of elections, to enter into consultations with such groups in order to discuss their participation in a future monitoring program.

In the absence of a direct domestic observer program, it still might be possible for citizens to organize themselves to conduct indirect monitoring of the elections. This could be a useful step in itself, and also lay the groundwork for direct participation of domestic observers in future elections.

II. SPECIFIC COMMENTS ON PROPOSED LEGISLATION

LEGISLATIVE ELECTION LAW

The comments in this section pertain to the proposed Law on the Election of Councilors and Representatives (Legislative Election Law, or LEL) drafted by the parliamentary working group. Many aspects of the proposed LEL have already been discussed in the preceding section on Overall Observations, and the comments in this section supplement those observations.

General Comments

(a) Scope and Applicability

Providing for both types of Montenegrin parliamentary elections (to the republican and municipal assemblies) in a single vehicle creates many ambiguities as well as gaps, overlaps and conflicts in the texts of various provisions. Some of these have been noted in previous comments, but there are so many instances that it would not be productive to catalogue them here.

Consolidation of the provisions related to all parliamentary elections in a single LEL carries over from the old LEL, which is also drafted this way. In one sense, the combination is desirable if it could sometime become the basis of a comprehensive election code. But as currently drafted, the combination might result in considerable mischief as to what provisions apply to what kind of elections and which bodies are being referred to at any particular point. One particular source of confusion is whether republican and municipal parliamentary elections must be scheduled simultaneously, or can be conducted at separate times.

At this time, the consultant recommends that further effort go into working through the detailed provisions of the proposed LEL to eliminate the problems caused by combining into a single law the provisions applicable to republican and municipal elections. In addition, he

would recommend that consideration be given to creating two entirely separate sections, or even entire bills, which could still share a common legal and administrative basis.

For the longer term, the current combined approach could provide a basis for the development of a more comprehensive election code.

(b) Relationship of the REC to MECs

One particular question, which has been raised by another IFES consultant (Barnes, 1997), concerns the relationship between the REC and the MECs, particularly with respect to municipal elections. Specifically, is the relationship Aconsultative@ (*i.e.*, with the REC exercising administrative authority) or merely advisory?

Also, it is to be noted in a general sense that the MECs may be obliged to follow certain instructions of the REC -- and may even have their authority substituted by that of the REC in case of their failure to discharge their responsibilities C but the REC does not appoint the members of MECs and the latter are actually accountable to the bodies that appointed them (see Article 17[3]), *viz.* municipal assemblies. The MECs must also rely for support on other government bodies (see Article 17[e]), which would ordinarily be provided at the municipal level.

These provisions must be thought through further, particularly in light of the comments on Separation of Powers and Administrative Transparency contained in the Overall Observations part of this report.

(c) Ballot Security

Other commentators (IFES, 1998; OSCE, 1997) have noted the absence of a ballot stamping, or validation, procedure at polling stations. Such measures do represent an important means of deterring ballot box stuffing. It is probably unrealistic, in view of the high demands on members of the PB during polling hours -- which results from the relatively small size of the PBs, the large numbers of voters assigned to individual polling stations, and newly introduced procedures such as having voters sign the extracts of the register before receiving ballots C to expect the officials administering the voting to stamp each ballot personally immediately before delivering it to a voter. On the other hand, arrangements could be made for a member of the PB, ideally the chairman, to pre-stamp a limited number of ballots several times during election day.

(d) Voting Outside Polling Station

The bill provides for several methods of voting outside the polling station (see Articles 86-92): Persons who are temporarily absent from their residence may request absentee ballots from the PB at their normal polling station (PS). Military personnel vote at their bases, and

students like others may vote by mail, upon request to their PB. Other persons who for some reason (such as illness or disability) cannot physically come to the PS on election day may also contact the PB for assistance; in this case, an official is sent from the PB to administer voting. Though the means of delivering the ballots to voters and back to the PS differs in each case, the form of balloting is essentially what would be described as an Absentee@ procedure; the voters mark their ballots, place them in an envelope, and enclose that envelope along with their voter identification in a second, outer envelope for delivery to the PS.

The consultant believes that this is essentially a sound procedure, and preferable to alternatives involving special polling stations or mobile ballot boxes. (In this regard the present consultant differs with the perspective of another IFES consultant, who prefers use of mobile ballot boxes; see Barnes, 1997.) Such alternatives create the possibility for fraudulent deposition of a large number of ballots, if there is not careful reconciliation before the contents of ballot boxes from these sources are entered into the counting stream.

At the same time, there are definitely practical difficulties. PBs under the current and proposed law are formed only 15 days before election day. This does not allow much time for persons wishing to vote outside the polling station to contact the PB and make the necessary arrangements, particularly if they involve receiving (and returning) ballots through the mail. Also, the provisions for physically delivering ballots from the PS to persons who cannot come to it on election day should be strengthened to include a greater number of representatives from the PB, as well as permit them to be accompanied by authorized party representatives and/or observers.

(e) Counting Process at the Polling Station

Some aspects of the counting process to be followed at PSs which are described in the proposed law (carried over from the current law) are unrealistic and could prove troublesome in the event of a complaint, especially as the remedies for violations, even of a technical nature, are often quite severe. These procedures should be reviewed in consultation with experienced election administrators to ensure that they do not conflict with normal and sound practice. In addition, consideration should be given to inserting a clause at the appropriate point that would enable the PB chairman to follow another method provided it fulfills all the requirement of the law. (Party representatives or others present at the PS could of course complain at the time in the event they believe a decision along these lines were questionable.)

One example is the provisions of Article 93 (4)-(5):

When the ballot box is opened, and after the control sheet has been checked, valid ballot papers are separated from the invalid ones."

The Polling Board states the number of invalid ballot papers and enters it into the record. It then states the number of valid ballot papers and the number of votes for each electoral list

and also enters into the record.@

Now, going through all the ballots first to determine whether they are valid, and only then to determine for whom the ballot was cast, would require examining every ballot twice. While it is of course necessary to determine the number of invalid ballots, that could presumably be done in the course of counting the ballots for all purposes, in a carefully controlled manner.

Thus, it would appear that the detailed provisions of the law with respect to technical operations at the polling station should be reviewed. In addition, it would appear desirable for the REC, or perhaps the MECs for municipal elections, to establish more detailed procedures through regulations consistent with the provisions of the law.

Running Commentary

This section contains additional specific comments that arise from running through the provisions of the bill, in order of the various articles:

Article 14: This article reflects Article 88(1) of the Montenegrin Constitution, which provides that the President calls parliamentary elections, in the sense of determining the precise date. The provision also states, however, that the President Aalso sets the time-limits for the election procedures prescribed by this law@. The consultant believes that properly it is the President who determines the date of a legislative election, but the relevant law should establish the time limits (except setting specific dates as a consequence of the President=s announcement). This may be merely a translation issue, however.

Article 21: This article states simply that, AThe election bodies take decisions by a majority of votes of their members.@ The question, as discussed earlier, is which members are meant; specifically, do representative members admitted at the request of political parties have the right to vote, and if so, on all business or only some?

Article 26: As noted earlier, party representatives proposed for inclusion on an election commission must be approved within 48 hours of the submission of their names. It is not clear from this provision precisely when such members would actually join the commission and exercise their functions.

Article 27(5): This article requires MECs to validate ballots by stamping them, prior to delivery to polling stations. This would appear to be a new practice, since it has been reported that there is currently no ballot validation procedure in operation. In event such a procedure is adopted, however, for the reasons noted earlier it would be preferable to have it applied at the polling station C as short a time as possible prior to the delivery of ballots to voters.

Article 31: See comment on Article 26.

Article 36: See comment on previous article. The fact that there have to be three separate articles on appointments of party representatives to the various electoral bodies (REC, MECs and PBs) reflects the need for improved consolidation of the legal provisions related to elections and ultimately for a comprehensive election code.

Article 37(3): This clause charges PBs to assign one of their members to administer voting outside the station. As argued earlier, it would be better to assign more than one member (possibly bringing in the deputies for this purpose). In addition, it would be desirable to make arrangements to permit party representatives and outside observers, if present, to accompany the official administering voting outside the station.

Article 39(3): This clause requires that, in order to submit an electoral list, a political party or citizens= group must propose candidates for at least one-third (1/3) of the available legislative positions being contested. Presumably this requirement has been adopted to deter the participation of small parties or citizens= groups in putting forward lists of candidates. However, the other methods also contained in the proposed law for this purpose (such as the requirement that the same number of supporting signatures be submitted, no matter what the size of the candidate list [see Article 43]; and the overall threshold for parliamentary representation [4%]) operate more effectively. It is difficult to see why a party or group should be forced to put forward so many candidates, knowing full well that they will probably not succeed in getting them all elected anyway. Quality in this instance should definitely be preferred over quantity!

This clause also prevents a party or other organization from putting forward additional (or Aalternate@) candidates, in the event other candidacies have to be withdrawn. It is unclear why a limited number of alternates is not allowed, especially as their presence could also be beneficial if a parliamentary vacancy became available to a party after the election.

Article 41: The consultant does not appreciate why a party one of whose candidates has been rendered ineligible for some reason, cannot substitute another candidate, at least in the event that the time period for the submission of electoral lists is still open. (Even after that time, it would be acceptable to permit substitutions in such cases, since any such substitutions could be publicized in the media as well as posted on a notice at the polls on election day.)

Article 43(4): This clause mandates the REC to Aprescribe the content and layout of the form for the signatures of electors...@ This useful provision should be supplemented by further standards contained within the statute itself. This entire issue has been discussed previously.

Article 45: The consultant applauds the decision not to attempt to regulate the signature-collecting process in a governmental manner. Such efforts inevitably impede free political discourse and civic activism. At the same time, it would be useful C in order to deter fraud and provocations C to devise a standard for the review of signature petitions that encourages

parties and citizens= groups submitting nominating petitions to regulate their own submissions carefully. This issue has been discussed previously.

Article 46: The ability of parties and citizens= groups to submit electoral lists until 15 days prior to the election means that the amount of time for the review and any challenges to nominating petitions is extremely limited. Under such pressure, election administrators and the Constitutional Court might be forced to take actions which threaten the fairness of the election itself. Serious consideration should be given to moving back the date by which nominating petitions must be submitted.

Article 47: This article, dealing with the review of nominating petitions by the relevant election commissions, allows such review to begin as soon as a completed petition is received, but allows the commission only 24 hours for this purpose (absent any appeal or request for modification). The subject of how to review signature petitions is a very complex one, depending largely on the special circumstances of the jurisdiction in question (particularly how voters are registered, and the amount of manpower, computer equipment and funding available); experts differ on the correct method even when circumstances are largely the same. What is striking about this article is the extremely short period available to the commission, namely one day, to make its determination. This seems to preclude any serious, empirical review, even if other circumstances permitted it.

Article 48: The standards referred to in this article, with respect to the adequacy of nominating petitions C Ano faults@ and Afaults have been eliminated@ -- appear unrealistically high. See the previous comment, as well as the earlier discussion of procedures and standards for review of nominating petitions, including signature lists.

Article 49(2): This may reflect a translation error, but the English version of this clause says that the order of Acandidates@ C not submitters of electoral lists C on the general electoral list should be determined by the chairman of the competent election commission by lots.

Article 49(3): Since the general electoral list must be published 10 days prior to the election, and parties and others must submit lists only by 15 days prior (see above), there are only five (5) days during which period all complaints and appeals regarding such lists must be resolved. This period is certainly too short.

PART VII (Articles 50-64) and Article 121: The provisions of this part and the later article must be compared with the proposed new Public Information Law, which is not within the scope of these comments.

Article 54: With respect to disclosure of the sponsorship of paid political advertising, the question is what is a political advertisement and what is not? (This is currently a big issue in the United States, where interest groups supporting one or another party or candidate run so-called Aissue ads@ that are really political advertisements by another name. There is also

evidence in the U.S. that these groups coordinate their media strategy with political parties and candidates, thereby doubly bypassing the regulations on political advertising.)

Article 57(2): This clause calls for the media and political parties to consult after the electoral lists have been submitted in order to develop more detailed rules on fair coverage. A similar approach, however, proved unworkable during last year=s presidential election (see OSCE, 1997, pp. 20-21).

Article 60: The OSCE indicated in its report on the presidential election (OSCE, 1997) that political posters were widespread, not confined to special locations maintained by municipal authorities, which indicated a need for making such locations available. This provision, like that in Article 59 of the current LEL, seems to address this issue adequately. The relevant election commission should undoubtedly promulgate some rules on how such spaces are to be used by political parties and candidates.

Article 63: This provision, which prohibits the publication of polls and similar information within seven days of the election, and the publication of preliminary results or estimates on election day itself, appears to be in line with international standards in this area. The publication of polling information (as well as exit interviews and similar techniques on election day) is ordinarily regulated more closely than other election coverage, since it contains supposedly scientifically-based information that is less easy for voters to evaluate than ordinary news reports, and could influence their voting.

It is admittedly extremely difficult to regulate this kind of conduct by the press; and in fact some responsible journalists reject such regulation entirely. During the 1996 municipal elections in Serbia, a major Belgrade newspaper (*Dnevni Telegraph*) printed a story on election day predicting that the opposition would win the elections. The story did not present polling data or other apparently objective evidence that could not be readily evaluated by readers, but was technically in violation of the ban in force there on certain political coverage 48 hours prior to election day and on election day itself; however, no action was taken against the newspaper.

Article 65 (2) & (4): Under these clauses, polling stations are established only 15 days before an election, and their locations are announced only 10 days before the election. These times are very close to election time; the latter time period, in particular, would hardly allow sufficient time for voters requesting special ballots to both receive them and return them by election day.

Article 65(4): This clause requires polling stations to be set up in such a way that the members of polling boards be able at all times to view the ballot box and voting material. The first question is whether representative members of the PB are also to have this prerogative, as previous observers have commented that this has not always been the case. Second, see the discussion later of the separate article that provides for voting secrecy, which

appears in conflict with the requirement contained in this article.

Article 66: The specified number of voters that can be assigned to a PS has been characterized as overly large, in view of the number of members on the PB and the number of voter list extracts available. These problems have been compounded by the adoption of an additional requirement that voters sign the extract as well as have their numbers circled thereon, at the time they receive their ballots. The second clause, which calls upon the REC to adopt more detailed rules for PSs, is welcome.

Article 68: The timing of the delivering of election notices to voters does not appear to provide adequate time for voters who require special ballots to receive them.

Article 69: This is one of those articles that contains a draconian remedy -- closure of the station, or nullification of the results -- for certain violations which may occur at polling stations. The meaning of *Averified* with respect to ballot papers is unclear, as there is no validation procedure, at least in practice. The requirement has been added for voters to sign alongside their names on the voter list extract, a good procedure but one that will increase the burden on the PB (see previous discussions). The exclusion of displays of political symbols or material within fifty (50) meters of a station is very hard to enforce, and has elsewhere (Serbia) apparently become the basis for provocations intended to nullify election results. The provision preventing the carrying of arms or dangerous instruments in a PS should probably be modified to permit policemen on active duty to do so while they come in to vote.

Article 71: A decision to close a polling station, and extend voting later as a result, should be promptly notified by the PB chairman to the relevant MEC.

Article 72 (2)-(3): These provisions would appear to conflict with the provision, discussed earlier, which requires that the ballot box and voting materials be within view of members of the PB. Even if not technically in conflict, the specified arrangement would still appear to prevent voters from being observed at all times after they receive ballots and deposit them in the ballot box, with the exception of whatever time they actually spend in a voting booth. This could enable persons who have received ballots to escape detection while they substitute other papers, or *vice versa*, thereby facilitating ballot fraud.

Article 73: Query why the ballot should contain an indication of the polling station, at least on the printed form. On the other hand, as noted previously, it would certainly be desirable for ballots which are issued to voters to be validated at the polling station.

Article 75: Clause (2) requires delivery of election material (presumably to polling stations) not later than 48 hours prior to election day. This period is rather long, and could result in additional problems with ballot security, particularly in the view of the absence of a validation procedure at the station.

Clause (3) requires other materials to be delivered to the stations by the competent municipal body. It would probably be desirable to distinguish between sensitive and non-sensitive election materials in some way, through definition. Sensitive material should include any stamps that are used at the PS for official purposes, and these should probably be retained between elections by an electoral body and not municipal authorities.

The final clause states:

On polling day, before the beginning of polling, the Polling Board shall determine whether the election material for that Polling Board is complete and in proper state, whether the polling station has been organized in such a way to ensure the secrecy of voting, and whether polling may start ...

It is certainly necessary for the chairman and the other members of the PB to perform this task prior to the time of opening of the PS, and also to undertake the necessary opening procedure when the polls are declared open. On the other hand, this provision implies that the PB would not have confirmed these matters earlier. It also appears to indicate that the voting materials would not be the responsibility of the PB from the time they are delivered to the PS.

In most election systems, these important matters of accountability and security, as well as proper operation, of the PS and election materials are not left to non-electoral authorities in the manner envisioned in this article. The consultant strongly recommends, therefore, that this article be re-drafted, or supplemented by another article which outlines the responsibilities of the PB in this regard.

Articles 77 - 78: The consultant notes with approval the provision in Article 77 under which party representatives on PBs have the ability within the five-day period following the election to inspect the election material, including ballot papers. He is concerned, however, by the fact that under Article 48 ballot papers have to be retained only for 60 (sixty) days or until the termination of procedure on the infringement of rights during the election. If the latter provision is meant to mean that cast ballots may ordinarily be discarded after only 60 days, then he would oppose it. (On the other hand, article 78[1] provides that election material must be kept for a period of at least four years; if cast ballots are intended to be within the scope of the latter phrase, then the period of time specified would appear to be adequate.)

The question also arises under Article 78 as to who is responsible for the retention of old election records, which is subject to rulemaking by the REC. The consultant believes that sensitive election materials (such as cast ballots, including invalid ones) should be retained by electoral authorities or another quasi-independent branch of government, such as the courts. (In Romania, for example, cast ballots are retained by the courts and other materials by other government authorities.)

Article 81: It should be recalled that while the presentation of identification may confirm the identity of a voter, it does not guarantee his eligibility to vote. That is established through proper constitution of the voter registry. This is particularly important since many acceptable forms of identification do not contain proof of citizenship.

Clause (3) of this article continues the old requirement that a PB member delivering a ballot to a voter must circle the ordinal number of the voter on the extract of the voter registry. It is not clear whether this is still necessary in view of the fact that another article now requires the voter to place his signature alongside his name on the extract.

Article 82: This article obliges the PB to explain the voting procedure to a voter, upon request. It does not provide for giving the voter another ballot in the event he hands back a spoiled one. This defect, also noted by another IFES consultant (Barnes, 1997), should be remedied by the addition of such a procedure.

Article 84: This article prevents any alterations to the extracts from the voter registry on election day, and provides for nullification of the voting at a polling station in the event that such an alteration is made. It is unclear whether allowing individuals to vote, even if their names are not on the extract, based on the submission of proper identification at the polling station and tracking of these voters on a “special list”, is consistent with this provision and desirable.

Article 93: Another IFES consultant (see Barnes, 1997) has observed that filling out the ballot in pencil should be added to the grounds for invalidity of ballots.

The provision in the final paragraph of this article, that the results of the election at a polling station must be nullified if there is a discrepancy in even a single ballot, is too draconian and could easily be exploited by *provocateurs*, especially if a member of the PB is in collusion with another interested individual or group.

Article 94: The summary of the PB's work is contained in a so-called *Arcord*, which includes the protocol of the results of the election at that PS as well as the log of any other significant events that may have occurred there. Due to the ambivalent sense of the word *Arcord* in this connection, it might be preferable to adopt the other terms suggested as well.

The consultant applauds inclusion in the record of comments by PB members and observations concerning other events; it might be well also to require a record of any comments of significance from other sources, including any accredited observers who might be present. The consultant also applauds the practice of making copies of the record to all members of the PB, but believes that requiring the entire record to be provided (and not just the protocol containing the results) could discourage the keeping of a proper log book. If accredited observers are present at the time the work of the PB is completed on election

night, it would be desirable if they could also be able to request an official copy of the record. In addition, in order to help facilitate election night tabulations and post-election day review by electoral bodies, political parties, voters and observer groups, it would be useful to post the protocol of results not only at individual polling sites but also at the MECs.

Article 103: This article contains time deadlines for the publication of official results by the REC and the MEC=s. It would also be advisable, as a confidence-building measure, to call for publication of partial results as they become available, unless the commission determines that the results are likely to be misleading, or their publication could lead to public disturbances.

Article 110: This article provides for early elections in the case of dissolution of the Republican Assembly; there does not appear to be a corresponding provision regarding municipal assemblies.

Article 112: The right to appeal election decisions (extended to A[e]very elector, candidate and submitter of an electoral list@) is extremely broad. Taken in combination with the provisions that require invalidation of election proceedings or results in certain situations, it could lend itself to conspiracies to attack the outcome of an election on this basis. This is what appears to have occurred in Serbia following the municipal elections of 1996.

Article 114: The procedures concerning administrative appeals within the system of electoral bodies do not explicitly provide for these bodies to hear appeals in the first instance from their own decisions, prior to referring them to superior commissions. It might be useful to include some provision for rehearings or appeal proceedings by electoral bodies, as such proceedings may obviate the need to appeal to a higher body or the court.

PART XII (Articles 117-118): The provisions of this part must be compared with the provisions of the proposed Political Finance Law, and will be discussed below in that connection.

Article 117: This article, which envisions payments for individual candidates (as opposed to their parties), does not make clear either on its own terms or with reference to other laws (such as the proposed Political Finance Law), what these funds can be used for. Presumably, candidates should use such funds only for campaign purposes, so there should be a reference to a provision in this law or elsewhere which defines what those are; see, *e.g.*, Article 9 of the proposed Political Finance Law.

Article 118: The reference to an agreement between election contestants and state bodies with respect to the use of facilities, *etc.*, should probably be redrafted so as to call instead for Aconsultations@ by those bodies with the parties. This would address the case in which an agreement cannot be reached.

Article 119: The consultant notes that the amount of the fine provided for in the first

sentence of this provision is not specified in the version before him.

Article 122(1): In the version of the bill being reviewed by the consultant, it is not specified which election commission this provision applies to C only the REC or also the MECs.

B. REGISTRATION LAW

The following comments concern the Proposed Law on Registers of Electors (ARegistration Law@), and are additional to any related points contained in the Overall Observations part of this report. The comments in this section are organized into General Comments and Running Commentary:

General Comments

The consultant wishes to begin by congratulating the working group on its success in incorporating virtually all of the provisions of electoral law related to the Voter Registry into this discrete bill. As a result of this effort, adoption of this proposed law will not only greatly clarify republican procedures on maintenance of the Voter Registry but provide a basis for further legal as well as administrative reform in this area.

Specifically, in the event a comprehensive election code is ever drafted, then surely this proposed law could become a chapter in that code. Meantime, this bill could provide the integrated legal basis for improvement of the Voter Registry, and be referred to as necessary in drafting and applying other laws related to elections.

(a) Non-Specification of Responsible Authorities

The most obvious deficiency of the proposed law is of course well recognized by the drafters. This is the non-specification of the governmental bodies responsible for conducting actions in compliance with the law at the republican and municipal level.

Primary responsibility for gathering data for inclusion in the Voter Registry at the municipal (and presumably republican) level lies with the police and other security services, which are in charge of maintaining residence information and certain other records. It is not known to the consultant which authorities are currently responsible for compiling this data into the basis for the Voter Registry; perhaps this task is performed on an interagency basis at the relevant level of government (primarily municipal).

The proposed law represents a laudable contribution to improving administration of the Voter Registry through specifying specific responsibilities and procedures, as well as assigning control authority (see below). It will continue to be difficult to obtain sufficient accountability, however, as long as the lines of administrative authority remain undefined. If this matter cannot now be specified in law, due to unresolved issues of government

administration, then perhaps more concrete assignments of responsibility related to preparation of the Voter Registry can be implemented subsequently, through executive order or regulation of the relevant Ministry.

(b) Mechanism for Updating Voter Information

As part of the effort to ensure timely entry and correction of information about eligible voters, the proposed law in Article 6(2) requires that changes known to responsible agencies of government must be reported to the authorities in charge of maintaining Voter Registries within 15 days after the date as of which any such change has occurred.[@] Several aspects of this formulation would make it difficult to administer, and therefore minor changes are suggested to this paragraph.

First of all, the clock should probably begin running from when an agency actually discovers certain information as a result of collection through standard means, submission by another agency, or being provided by an individual C not from the time that a change in voter information A has occurred[@]. It is not reasonable to assume that a responsible government agency would always receive such information within that period of time from its occurrence, even if it is operating diligently. If it is failing to operate diligently, then its officers could be liable to penalties under another provision.

Second, it is probably more efficient to direct government agencies to report all related information within their possession according to some regular schedule C say, every 15 days. (This is probably how such agencies would attempt to follow the directive contained in this paragraph anyway.) This would permit the agencies to A bundle up[@] the information they have in an orderly and regular way. Otherwise, if an agency received some piece of information on day number 15 of its usual reporting cycle and it did not get included in the batch being transmitted that day, then probably the information would not actually be relayed until the 16th day (when the next batch is sent), which would technically be a violation of the 15-day requirement.

For these reasons, it would be more realistic to require that the authorities in charge of keeping certain records transmit new information relevant to the Voter Registry, if any is received, every so often (say, 15 days, as in the bill). In order to ensure that not too much time goes by before they obtain updated information about voters, the agencies should also be directed to devise systems by which relevant information about voters is received by them within a similarly reasonable period of time (once again, perhaps 15 days).

(c) Rulemaking and Supervision

Article 6(5) is a very important provision which mandates that a republican ministry be responsible for making rules and exercising supervision over the voter registration-related activities of government agencies.⁹ As in other parts of this bill, it is unfortunate that the

precise identity of the relevant ministry cannot be set down. But, of course, this could change from time to time as a result of government decisions concerning the structure and organization of the ministries.

The rules and procedures established by the Ministry under this paragraph will be critical in ensuring that voter information is maintained in an accurate manner. Although the Ministry is required to promulgate rules within a relatively brief 30 days from the date of enactment of the proposed law,⁴ it should plainly continue to refine these rules and develop new procedures on the basis of its ongoing supervision in this area.

Under the Ministry's mandate to supervise compliance with the law and its regulations, it should order that regular checks be run on the accuracy of voter registers. It should also require periodic reports from the various agencies which are assigned to compile the actual registries, as well as other agencies which are responsible for transmitting information to them. It might be desirable explicitly to include these two elements into the statutory framework as part of Article 6(5).

(d) Inspection and Appeal of Voter Registry Information

Under the proposed law, voters are informed by notice C and possibly other means C of their ability to check the Voter Registry just days after elections are called (see Article 7). Political parties are also able to obtain the information in a Voter Registry in the form of computer data (see Article 9[3]). It is not clear, however, whether election authorities C especially the MECs C must provide reasonably convenient facilities for interested persons and parties to review the Voter Registry in printed form, and exactly what the scope of the right to appeal alleged inaccuracies in the Registry is.

One apparently serious omission in the proposed law is the absence of any reference to inspection of the voter registry, or extracts therefrom, at the precinct (polling station) level. Presumably, it would be quite onerous and time-consuming for voters and others to travel to municipal offices in order to check the registry. In Serbia, this problem is addressed by making the extracts from the registry available at the polling station or nearby facility at the precinct level. (Even this measure was not completely successful there, however, as shown by the discussion that follows.) It is unclear why such a measure was not included in the proposed Registration Law, especially since Article 65(2) of the proposed Legislative Election Law provides a ready basis for it; that paragraph states:

APolling stations are set up by the Municipal Election Commission upon the proposal of the

Article 11 of the proposed law states:

AThe Ministry in charge of administration affairs is obliged to pass the regulations referred to in Article 6 above within the period of 30 days from the day of coming into force of this law.@

body in charge of keeping the register of electors not later than 15 (fifteen) days prior to the polling day.@

It is therefore recommended that a provision be added to the proposed Registry Law explicitly providing for making extracts of the voter registry available for inspection at the polling station or a nearby facility as soon as possible after the polling station is formed.

Issues about the procedures for inspection and appeal of the voter list became quite significant in Serbia after the experience of the 1996 municipal elections. (See Finn, 1997; IFES, 1997a.) According to NGO representatives and the opposition spokesman there, Serbian election law and regulations was interpreted to permit review of the voter list (VL) only by individuals, with respect to determining if they themselves (and perhaps their families) were properly listed. It is widely believed that the inclusion of additional names on the VL is a main source of fraud, since it would permit members of the polling station commission or others to insert extra ballots into the counting stream without leading to invalidation of the results at that station. (As in Montenegro, the election laws in Serbia require invalidation of the results at a polling station whenever any ballot reconciliation problem occurs, no matter how minor. Therefore, it would be difficult for ballot boxes to be stuffed unless additional names are entered into the VL and checked off in an equivalent number to the false ballots that are added.)

There were numerous stories circulating in Serbia concerning inexplicable inaccuracies in VLs maintained at the precinct level in connection with the municipal elections. Reportedly, one homeowner in the Belgrade area, the head of a family of four who lives in a house, went to check his name and -- when he looked at the names listed under his address -- found that there were six, the four members of his family and two others who were unknown to him! Yet he was reportedly not permitted to challenge inclusion of these names.

Under the Serbian Parliamentary Election Law, similarly to Montenegro, the VL is made available for review within three days after elections are called; it is finalized 15 days before the elections. Citizens are permitted to inspect the list, although it is not clear in the law how far that right extends.¹⁰ After the election, parties have the right to inspect election materials, including VL's, but it would presumably be difficult for them to conduct a comprehensive review and mount an appeal within the necessary time period.⁵

Similarly to Montenegrin law, Art. 74 of the Serbian law provides as follows:

"Representatives of the submitters of electoral lists and candidates for representatives have the right to inspect the electoral materials, and specially the extracts from the electoral rolls, the minutes of the electoral commissions and the ballots. This can be done in the official premises of the electoral commissions, as well as with the authorities keeping the electoral materials.

"Inspection of the electoral materials can be carried out within five days of the day of holding of

(Against the characterization of this process by the Serbian opposition, an IFES team was informed by other knowledgeable persons that voters there may in fact check other names in addition to their own, and take action to challenge them if necessary; and that such checks may also be made by individuals on behalf of a party or other nominating organization. It would appear, however, that practice differed on this point at different places, and that in some areas election administrators made it difficult to conduct a systematic review of the list by imposing certain conditions on inspection and review -- *e.g.*, by prohibiting photocopies to be made of the list, necessitating it to be copied by hand.)

It was also alleged in Serbia that numerous extra ballot papers were printed by the State in order to facilitate the fraudulent practice of entering additional ballots into the count in numbers corresponding to additional names being checked off on the voter list. (Ballot papers there are printed on instructions of the district election commission, but the actual printing is conducted by state bodies.)

Serbian NGOs and the opposition informed the IFES team that their suspicions about the integrity of the elections process initially focused on "post-protocol" aspects of the election process -- *i.e.*, transport of the protocols and other voting materials from the polling stations, delivery to the district commissions, tabulation by the commissions and publication of results. They later became convinced, however, that large-scale fraud also occurs at the polling station level. An opposition spokesman said that failure to address this single issue would lead the main coalition to stage a boycott of the 1997 parliamentary elections; the opposition did boycott the election but largely for other reasons.

In light of the Serbian experience described in the previous paragraphs, which arose under nearly identical legislation as that which is proposed for re-enactment in Montenegro, greater specificity may be required concerning the ability of individuals and parties to review voter registries in a meaningful way, and to appeal whatever discrepancies they discover. The entire register should be available for review by interested persons, and representatives of parties should be permitted to make arrangements to copy it if they so desire. An individual should be permitted to appeal any information he has factual grounds to know is incorrect; this is apparently provided for by Article 7(3). And a party or other organization contesting the elections should be permitted to appeal any aspect of the registry.

(e) Citizenship Issues

It would appear, based on the discussion of citizenship issues in the Overall Observations part of this report, that the means of ascertaining citizenship of the FRY and Montenegro are imperfect and that the Voter Registry may contain significant deficiencies in this regard. Further provisions should be developed on this point, for separate inclusion in the proposed law or for addition to the scope of rulemaking and supervision undertaken pursuant to the

elections."

law.

2. Running Commentary

Article 7(2): This paragraph requires that, in addition to public notice, media announcements and other means should be used to inform voters of their ability to inspect the voter registry Aif the need arises@. The quoted phrase should be deleted, since he feels that such means of communicating the information to the public would always be warranted.

Article 7(3): This paragraph does not limit the scope of a request for change of information in a voter registry, provided it is supported by proper evidence. Does this mean that any person can challenge any information in the registry? (The consultant supports the latter approach; see discussion above.)

Article 7 (4)-(6): These paragraphs establish a very sensible procedure by which complaints about the voter registry are compiled by the administering agency, and forwarded to the Supreme Court in batches. The consultant assumes that the only function of the agency would be ministerial in nature C *i.e.*, to compile the appeals C and that it could not eliminate them without further right of appeal.

Article 9(1): This paragraph calls for a single copy of the extract from the Voter Register to be provided to each polling station. Observers have indicated their belief that additional copies may be required to accommodate the new procedure of having voters place signatures beside their names on the extract when receiving ballots.

Article 9(3): This paragraph obliges administrators to provide a Aparty submitting the election list@ with a copy of the voter registry by a computer diskette containing the information, if requested. First, at is the meaning of the word Aparty@; is it a political party? Second, must the party already have submitted a list of candidates, or is it sufficient for it to be preparing to do so? And how would the latter be determined? Third, why only parties and not other submitters of electoral lists in the event there are any? Fourth, it is necessary to specify that a copy of the register would be made available on paper in the event that the register has not been computerized satisfactorily. (This addition is required by Article 12, which permits paper records to be used to maintain voter registries in case computerization is not feasible.) Fifth, since computer technology is always changing (much faster than laws!) it might be well to add the phrase Aor other commonly-used electronic data storage medium@ after the words Acomputer diskette@.

Article 10: The consultant is not familiar with Montenegrin practice in the area of violations and penalties. However, it would appear that the nature of the violations defined in this article (administrative, civil or criminal) are not defined; so that the relevant standards and procedures for their adjudication may not be clear.

POLITICAL FINANCE LAW

The consultant believes that adoption of a separate law, or code section, on financing of political parties will provide a basis for better regulation of campaign and other political fundraising and expenditures by parties. At the same time, the proposed Political Finance Law is somewhat undeveloped and requires further clarification and strengthening.

Scope and Applicability

The proposed law is limited to the financing of political parties, and includes activities both during an election period and at other times. It would also be desirable to include certain activities of other organizations, such as the citizens= groups which may also submit electoral lists during a legislative election C especially as these matters are not currently addressed within any other proposed law, such as the proposed Legislative Elections Law. Note that Article 1, on the purpose of the Political Finance Law, is limited to political parties, but that term is not defined either in this proposed Law or by reference to any other law.

2. State Subsidies

(a) Non-Campaign Subsidies

Articles 3(1), 4 and 5 call for direct subsidies by the State to established political parties, *viz.*, those whose candidates have been elected to the republican or municipal assemblies. The funds, which would come out of the republican and municipal budgets respectively, would total 0.3% of total budgetary revenues anticipated during that budgetary year.

Subsidies to established political parties could have the benefit of strengthening them and helping to stabilize the political environment in Montenegro. The consultant is nevertheless wary of funding parties outside the election campaign period. The assurance of such funding could lead established parties to fail to concentrate on maintaining and increasing their Agrass roots@ support, and also contribute to public apathy or at worst resentment toward them. It would also place at an immediate disadvantage new parties and citizens= groups which are also entitled to put forward candidates in elections and make a contribution to the political life of the country.

At the same time, until the property issues pertaining to the successor parties of the Communist League, ie. both wings of the DPS, are resolved by the courts, these two parties have an enormous financial advantage over the other political parties, thereby obliterating a level playing field. Other parties may require additional state support in order to remain competitive during election periods and maintain their organizational structure. In addition, given that Montenegro's economy has all but collapsed as a result of the sanctions and Yugoslavia's continued international isolation, it would be difficult to raise funds from legitimate sources (individual, legal, and corporate) at this time. If political parties were

stripped of their state subsidies and if they were unable to solicit legal contributions, one can assume that would be impossible for parties to survive using legal means.

(b) Campaign Subsidies

Article 6 establishes the basis for campaign subsidies to political parties, but once again not to other organizations participating in an election. Under Article 6(2)(a), parties which are already represented in the legislature would receive 1/3 of these funds, provided they have expressed their intention to take part in the elections. (Some mechanism should be specified to formalize the method of making this expression for purpose of being eligible to receive these funds.)

Under Article 6(2)(b), an additional 1/3 of the funds available for this purpose would go to assist the campaigns of political parties which have successfully put forward a candidate list. No method of distribution is mentioned; perhaps these funds should be distributed in proportion to the number of candidates on the respective lists.

Under Article 6(2)(c), the remaining 1/3 of the funds would go to parties which have won mandates presumably in the election in question. It is also not specified how these funds would be distributed. While rewarding the winners is a somewhat appealing approach, the consultant feels it is unwise to make the issue of funding turn on electoral results. Just because a party might not have done well at the polls does not mean that it did not make a serious and important contribution to political discourse.

3. Solicitation and Use of Private Contributions

Under Article 8, private funding by the party itself could be used both for campaign and other pre-election activities, presumably including mounting a nominating drive. This means that the State subsidies provided as discussed above could be used to provide advantages to incumbent candidates and parties and the expense of newly-organized political forces. In addition, there is no mechanism to prevent a party from using any funds, including private contributions, left over from a previous election campaign to be used for pre-campaign activities.

Under Article 8(2), however, only after they successfully register their electoral lists can parties collect private contributions, including in the manner specified in paragraph (3) of that article. Paragraph (4) states that, Contributions to individual candidates or election lists can be made by individual citizens, but it does not explicitly rule out such contributions by other legal persons such as business entities. It also does not address a practice that is currently problematic in the United States the so-called bundling of separate, apparently legal, contributions from individuals at the initiative of another individual or business entity.

It would appear that there should be a limit on political contributions from any one source. While a later article (see below) would establish a ceiling on total expenditures by a party, it would presumably also be undesirable to permit parties to rely too much on only a single or

small group of private contributors. Also, while later disclosure (if any) of that fact might affect the image of a party, that prospect alone is probably not sufficient to deter it from accepting large contributions from individuals or groups during the heat of a campaign.

4. Expenditure Limit and Types

Article 9(2) refers in draft to a proposed overall limit (or Ceiling) on the total expenses of an election campaign for a party, which would be based on some multiple of the net republican average salary just prior to the election period. These expenses would have to be of the types specified in paragraph (1) of that article, which include various kinds of political advertising but do not include operating expenses.

5. Reporting and Supervision

(a) Supervision

Articles 12 gives some measure of control over the raising and expenditure of funds by political parties to the Authority in charge of controlling the financial and material operations of legal entities. Perhaps the Justice or Interior Ministry. Under Article 13, that ministry should report irregularities to the Ministry in charge of finances (Finance Ministry). The only clear enforcement power given directly to the Finance Ministry would be withholding further State funding from violators. Parties in violation could also, however, under Article 13, be fined a certain maximum sum and forced to disgorge the funds it received illegally. (Specific individuals could also be punished by fine and confiscation of funds under Article 14.)

Unfortunately, the articles referred to do not give clear supervisory authority, including the right to establish regular reporting procedures and provide for public disclosure, to state bodies. Instead, the primary delegation for the establishment of procedures, under Article 10, is to the parties which have representatives in the Assembly, who are instructed to enter into a special agreement on this matter within 15 days after elections have been called. Query whether bestowing such important authority on a group of non-governmental entities, namely the political parties, is not an unconstitutional delegation of legislative and regulatory (quasi-executive) power under the Separation of Powers and other constitutional doctrines.

While it would be desirable to bring the parties together to discuss the modalities of regulating campaign expenditures, that would better be done on a universal basis *i.e.*, including all parties which have successfully put forward candidates for election. It would also be desirable for such an inter-party agreement to be made on the basis of regulations and procedures developed by the competent government bodies, in consultation with the parties if possible.

(b) Reporting

The reporting and disclosure requirements of the framework described above are weakly defined.

Article 11 provides for parties to keep records of their revenues and expenditures, but does not require that they be detailed and contain certain aspects such as specific sources, dates, the reasons for expenditures, documentation and the like. Also while paragraph (2) of that article does make this matter subject to the control of competent authorities, it does not clearly grant them rulemaking authority, including to require regular reporting.

The only reference to public disclosure of the results of control of political finance is in Article 10(3), which provides that Results of control shall be published in the news media. That reference, however, comes in the article describing the proposed inter-party agreement as the basis for control. It is not clear that the results to be published under such an agreement would include any detail concerning the amounts of funds raised, and from what sources, by the parties, nor the precise amounts they have expended, and for what purposes.

The consultant believes it is essential to provide the kind of information described above for regular summary reports of party fundraising and expenditures, as well as for fuller and more detailed reporting on a periodic basis. The records submitted by the parties under such rules should also be open to inspection by the public and the press, including during the campaign period.

REFERENCES

Barnes, 1997. C. Barnes, Memorandum, A Preliminary Administrative Review of Montenegro=s Draft Law on Election of Councilors and Representatives@, January 2, 1997

Federal Republic of Yugoslavia (FRY), 1997. Law on Citizenship, effective January 1, 1997

FRY, 1992. Constitution of the Federal Republic of Yugoslavia, published in translation by the Ministry of Information of the Republic of Serbia and the Secretariat of Information of the Republic of Montenegro (Belgrade, 1995)

Finn, 1997. D. Finn, A Republic of Serbia: >Pre-Election Technical Assessment by the International Foundation for Election Systems=, Final Report on Election Law and Procedures@, May 5, 1997

International Foundation for Election Systems (IFES), 1998. Montenegro: Voter Awareness Assessment (Draft, December 1997)

IFES, 1997a. Republic of Serbia, Pre-Election Technical Assessment, April 1997

IFES, 1997b. Moldova: Legal Assistance; The Development of Electoral Laws and Institutions (July 1997) (written by D. Finn, Legal Consultant)

Montenegro, 1992. Republic of Montenegro, Constitution of the Republic of Montenegro, adopted 1992, promulgated 1994, published in translation by the Secretariat of Information of the Republic of Montenegro

Montenegro, 1997a. Republic of Montenegro, Electoral Law (Official Gazette of the Republic of Montenegro, Nos. 49/92, 16/95 and 21/96), published in translation by the Republican Elections Commission

Montenegro, 1997b. A Agreement on the Minimum Principles for the Development of Democratic Infrastructure in Montenegro@ (signed by multiple political parties with parliamentary representation)

Montenegro, 1997c. A Draft Law on the Election of Councilors and Representatives@, Parliamentary Working Group, 1997

Montenegro, 1997d. A Law on the Financing of Political Parties@, by Parliamentary Working Group

Montenegro, 1997e. A Proposed Law on Registers of Electors@, by Parliamentary Working Group

Montenegro, 1997f. ADraft Version: Public Information Act@, by Parliamentary Working Group

Organization for Security and Cooperation in Europe (OSCE), 1997. Office for Democratic institutions and Human Rights (ODIHR), Republic of Montenegro: Presidential Election, 5th and 19th October 1997; Final Report

Pajvancic & Milkov, 1995. M. Pajvancic & D. Milkov, AThe Protection of Liberties and Rights of Citizens in the Constitutional System of Yugoslavia@, Yugoslav Association of Constitutional Law (Belgrade, 1995)

Similar language is contained in the commentaries accompanying the Registration Law and Political Finance Law.

These objectives included:

A-- Intensify the work of an all-party task force aimed at upgrading the law on election of deputies and councillors, the law on information, the law on the financing of political parties and the law on voting registers. The upgrading of the above legislation should be aimed at: making sure that all the voters have the opportunity to cast their ballot freely; establishment of a proportional voting system (Montenegro C one electoral unit, modified so as to ensure adequate representation of the Albanians in the Assembly of Montenegro); improvement of mechanisms of control of the election process and election results; further democratization of the state-owned news media and ensuring equal access to the media for all the participants in the elections; ensuring fair financing of the parties and public control of their revenue; ensuring up-to-dateness, accuracy and accessibility of voting registers, as well as other conditions which the signatories shall consider as a contribution to the democratic quality of the election process."

A-- The legislation should be ready by the end of September and should be passed at the first sitting of the regular fall session of the Assembly. The adopted solutions should be enforced without delay, in particular those related to the election of the new managing bodies and editorial teams of the state-owned news media, up-to-dateness of the voting registers and financing of the political parties.@

Actually, the related provisions in Part XIV, ATransitional and Final Provisions@, of the proposed LEL are not entirely unambiguous. Article 122 appears to call for the creation of new election commissions at the Republican and probably municipal levels within the prescribed seven-day period. But there is no provision explicitly dissolving the current commissions -- which presumably still exist under current law, holding over from the time of the last parliamentary elections -- except that the current law would be repealed from the effective date of the new one (see Article 124). Also the language of Article 122(1) is not entirely clear in its application, especially as the next clause of the article applies to the REC only; however, clause (1) states:

A The chairman, the secretary, election commission members and their deputies in the permanent composition shall be, in conformity with this Law, appointed not later than 7 (seven)

days following the day of this Law coming into force.@

This may simply reflect a shortage of judicial personnel, but recent events both in Serbia and Montenegro have created a suspicion of the role of judges in the process of election administration. (See Finn, 1997; IFES, 1997a.)

Clause (4) thereof reads as follows:

“The secretary of the Republic Election Commission is appointed from among the experts in electoral system(s) and is a full-time employee of a republic authority in charge of the election system and organization of government.@

There is no comparable provision in the current LEL regarding the MEC=s, but they are also supposed to have secretaries among their memberships pursuant to Article 25. In addition, Article 38(2) of the proposed LEL states that, *AThe conditions for the work of the Municipal Election Commission are provided by the Municipal Assembly.*@

It is useful to note that Serbia has a similar provision regarding the position of Secretary of its Republic Election Commission, in Article 38 of its Parliamentary Election Law: *“The Republic Electoral Commission shall have a secretary appointed by the National Assembly from the order of professional workers of its services, who shall participate in the work of the electoral commission without the right to participate in decisionmaking.”* The consultant views this provision as worse in one sense, since involving a staff member of the legislative branch in the business of an election committee would appear to represent another violation of the doctrine of the Separation of Powers, in addition to raising questions about administrative transparency.

The specific recommendation of the IFES team was: ASome thought should be given to establishing a double threshold requirement, *e.g.*, the signature petition must contain valid signatures equivalent to at least 1% of the total number of voters in the constituency and errors or invalid signatures in excess of a legally established threshold will cause the petition to be declared null and void.@ (IFES, 1998.) Two advantages of the IFES proposal are that it focuses from an administrative point of view entirely on the issue whether a sufficient number of signatures have been submitted, and that sufficient care was taken by the submitter to demonstrate its good faith effort to collect them. (The question of fraud, or intentional failure to submit a sufficient number of valid names, could be pursued if it arises as a result of information obtained by the commission, either as a result of its own review or through a complaint filed by a third party.)

At the time this report is being written, the consultant did not have available to him a map of the proposed second constituency or information concerning its demographic composition. He has been informed by IFES staff that, in all likelihood, the second constituency includes a number of areas in which the Albanian minority is concentrated, including municipalities and parts thereof located near the border with Albania. He has also been informed that the second constituency is probably not contiguous, *i.e.*, that not all its components are geographically connected to each other.

The following paragraphs could also apply to obtaining citizenship of Montenegro in the event Montenegro, like Serbia, has not enacted a separate citizenship law but instead relies on the Federal one. The consultant has no information on this point.

The paragraph states:

The ministry in charge of administration affairs shall govern in more detail the manner of keeping, correcting, supplying, concluding, copying and publicizing the Register of Electors and other matters needed for the maintaining of complete, accurate and up-to-date registers and shall supervise compliance with the regulations governing the maintaining of Registers of Electors. @ Art. 21 of the 1992 Serbian Law provides in relevant part as follows:

"Within three days of the day of calling for elections, the competent agency shall notify citizens, by way of a public announcement or through the mass media, that they may inspect the electoral roll and request in or removal from the electoral role, as well as its modification, amendment or correction."

The article also addresses the procedures for complaints and appeals.

ANNEXES

- I. WORKPLAN**
- II. BRIEF VOTER AWARENESS ASSESSMENT, REPUBLIC OF SERBIA**
- III. POLL WORKER TRAINING MANUAL**
- IV. POLL WORKER TRAINING CURRICULUM**
- V. ADULT EDUCATION MANUAL**
- VI. EVALUATION OF TRAINING, PHASE I**
- VII. EVALUATION OF TRAINING, PHASE II**
- VIII. TRAINING CERTIFICATE OF ACHIEVEMENT**
- IX. CONTACT LIST, REPUBLIC OF MONTENEGRO**
- X. CONSTITUTION OF MONTENEGRO**
- XI. LAW ON ELECTION OF COUNCILORS AND REPRESENTATIVES (DRAFT)**
- XII. LAW ON THE REGISTRY OF ELECTORS (DRAFT)**
- XIII. LAW ON THE FINANCING OF POLITICAL PARTIES (DRAFT)**
- XIV. LAW ON PUBLIC INFORMATION (DRAFT)**
- XV. AGREEMENT ON MINIMUM PRINCIPLES FOR THE DEVELOPMENT OF DEMOCRATIC INFRASTRUCTURE**
- XVI. IFES ADMINISTRATIVE ANALYSIS**
- XVII. IFES TECHNICAL ANALYSIS OF VOTER REGISTRY PROPOSAL**
- XVIII. OFFICIAL PRESIDENTIAL ELECTION RESULTS, REPUBLIC OF MONTENEGRO**
- XIX. RFP, DELIVERY ORDER, MODIFICATIONS TO DELIVERY ORDER**
- XX. WEEKLY REPORTS**